



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.

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क फाइल संख्या File No : GAPPL/ADC/GSTP/1193/2023 -APPEAL / 8416-21

ख अपील आदेश संख्या Order-in-Appeal Nos. AHM-CGST-001-APP-JC- 144 /2023-24

दिनांक Date : 30.10.2023 जारी करने की तारीख Date of Issue : 08.11.2023

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.ZE2402230222083 dt. 15.02.2023 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 Indian Potash Limited "Potash House" No. 45, Drive in Road, Nr. Vijay Cross Road, Opp. Nirav Park, Navrangpura, Ahmedabad-380009	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 दाखल 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 अपीलार्थी 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

M/s. Indian Potash Limited, No.45, Potash House, Drive in Road, Near Vijay Cross Road, Navrangpura, Ahmedabad 380009 (hereinafter referred as 'Appellant') has filed appeal against the Refund Rejection order No.ZE2402230222083 dated 15.02.2023 in the form RFD-06 (hereinafter referred as 'impugned order') passed by the Assistant Commissioner, CGST, Division - VI, Ahmedabad South (hereinafter referred as 'adjudicating authority').

2. Brief facts of the case are the appellant had originally filed refund claim for an amount of Rs. 8374752/- for the period July 2017 on 17.10.2020 under 'ANY OTHER(SPECIFY)' category. The adjudicating authority rejected the claim vide impugned order on the ground that the appellant had neither appeared in personal hearing nor submitted his reply in GST-RFD-09, by relying upon the Hon'ble High Court of Kerala in case of S.I. Property Kerala Pvt Ltd., vs. CCE, Thiruvananthapuram. Being aggrieved by the said order, the appellant approached First Appellate for relief. The Additional Commissioner (Appeals), Ahmedabad vide his OIA No.AHD-CGST-001-APP-ADC-147 to 160/22-23 dated 18.11.2022 set aside the refund order without going into the merits of all other aspects and also directed the appellant to submit all relevant documents/submissions before the adjudicating authority.

Accordingly, the appellant filed the present refund claim vide ARN No.AA241222049570N dated 16.12.2022 amounting to Rs.83,74,752/- before the jurisdictional officer. On scrutiny of the claim, certain discrepancies were noticed and SCN in Form GST RFD-8 dated 30.01.2023 was issued to the appellant on the following grounds:

- ❖ The appellant's refund claim is filed based on a judgement issued in respect of other tax payer;
- ❖ Based on the judgement of Mohit Minerals Pvt Ltd., vs UOI and Mafatal Industries Ltd. Vs UOI, when any provision in the statute has been held to be unconstitutional, refund of tax under such statute will be outside the scope and purview of such enactment and under such circumstances, refund can be claimed by way of a suit or by way of writ petition.
- ❖ It is not mentioned in the refund claim that the refund pertains to Ocean Freight of GST, and the reference of the Supreme Court judgement in the case of Mohit Minerals Pvt Ltd.



❖ In the case of S.I.Property Kerala Pvt Ltd. Vs. CCE, Thiruvananthapuram, the Hon'ble High Court of Kerala has held that "it is not open to an, person to make a refund claim on the basis of a Court/Tribunal decision rendered in the case of another person;

4. The adjudicating authority vide his impugned order rejected the refund claim on the grounds:

- > The judgement of the Supreme Court in the matter of ocean freight declaring levy of GST on ocean freight where the goods or service are bought on CIF basis as unconstitutional; Section 54 of CGST Act, 2017 gives power to proper officer to sanction refund in specific cases on the basis of completion of certain conditions. As the present refund claim is filed based on the case of Mohit Minerals Pvt Ltd., vs UOI, it does not fall under any category of refund prescribed under Section 54 of CGST Act 2017.
- > Relied upon the judgement in the case of S.I.Property Kerala Pvt Ltd. Vs. CCE, Thiruvananthapuram, the Hon'ble High Court of Kerala has held that "it is not open to any person to make a refund claim on the basis of a Court/Tribunal decision rendered in the case of another person.
- > Relied upon the Supreme Court judgment in the case of Mafatlal Industries Ltd, wherein it is held that refund of tax under such statute will be outside the scope of and purview of such enactment and under such circumstances, refund can only be claimed by way of a suit or by way of a writ petition.

Being aggrieved with the "impugned order" the 'Appellant' filed appeal on 14.03.2023 on the following grounds:-

- As per Rule 92(3) of the CGST Rules, 2017 the show cause notice and the impugned order were not uploaded on portal;
- As per Circular No.128/47/2019-GST dated 23.12.2019, no DIN number has been allotted in the SCN and the impugned order and hence would be considered invalid and non-Est in law;
- The Assistant Commissioner had neither considered the facts submitted by them nor called for any records from them before deciding the impugned order;
- The appellant has placed reliance on Collector of C.Ex., Vadodara vs Dhiren Chemical Industries 2002 (139) (ELT 3(SC) and UOI v Arviva Industries (I) Ltd 2007 (209) ELT 5(SC) and UOI v Kamlakshi Finance Corporation Ltd. 1991 (5%) ELT 433(SC) etc.
- The appellant reiterates that they have furnished all relevant documents

as per the direction of Commissioner while re-submitting / refiling of Refund Claim application. The adjudicating authority has not disputed regarding this aspect in the impugned order;

- The adjudicating authority failed to consider and follow various judicial precedents by Supreme Court and High Court wherein this issue has been settled and taxpayers are admissible to take refund.
- No opportunity of personal hearing was granted as per the provisions of Rule 92 of the CGST Act, 2017; in the impugned order at para 8 the appellants were directed to attend hearing on 03.02.2023 however the appellant did not appear ; that they did not receive the intimation of personal hearing; however they visited the adjudicating authority on 15.02.2023 to settle the issue raised in SCN before submitting the response to it. But, they were denied any oral conversation over the issue and as such passed the order on the very same day. In this regard, the appellant relied upon the decision of Apex court in the case of Asst Commnr. Commercial tax department Vs Shukla & Brothers 2010(254) ELT 6 (SC), Automotive Tyre Manufactures Asson vs Designated Authority [201(263)ELT 481(SC) and some more case laws;
- The appellants have discussed about the history of GST levy on Ocean freight in detail;

The officer has erred in law and in facts in applying the judgment in the case of Mafatal Industries Ltd to the refund matter of their Company and stating that refund of tax under such statute will be outside the scope of and purview of such enactment and under such circumstances, refund can only be claimed by way of a suit or by way of a writ petition.

- The Gujarat High Court in the case of Mohit Minerals Pvt. Ltd., &Ors., Vs UOI &Ors., has held that no tax is leviable on the ocean freight for services provided by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India. The appellant have applied for refund under mistake of law where the levy was made un-constitutional by virtue of High Court Judgement

- Have relied upon various case laws of Gujarat High Court, Rajasthan High Court, etc., whereby based on the judgement passed in case Mohit Minerals, have held that Entry 10 of the Notification No.10/2017-Integrated Tax (Rate) dated 28.6.2017 as ultra vires Section 5(3) of the IGST Act, 2017 as well as Article 14 of the Constitution of India, and granted refund of the IGST already paid under reverse charge;



Mainly, the appellant relied upon the judgements of the Hon'ble Gujarat High Court in the case of (i) Bharat Oman Refineries Ltd., vs UOI & 1 others SCA No.8881/2020 dated 18.08.2020, wherein it has been directed to the Respondents to sanction the refund application and refund the requisite amount of IGST already paid by the Petitioner pursuant to Entry No.10 of RCM Notification declared to be ultra vires.

That they have rightly claimed their refund claims under Section 54 of the CGST Act 2017.

In light of above submissions the appellant has prayed that -

- To consider refund claim filed by them to be in compliance with the provisions of GST Act.
- To drop the refund rejection order passed by the Assistant Commissioner (Div.-VI) and allow for refund of excess tax paid by them as RCM on ocean freight.

6. Personal Hearing in the matter was held on 27.07.2023 wherein Mr. Rahul Kumar, Assistant Manager of the company and Ms.Rakhi Jain, from Deloitte Haskins & Sells, appeared virtually on behalf of the Appellant' as authorized representatives. During personal hearing they reiterated the grounds of appeals filed by them and also submitted that this case of Hon'ble SC is change of law and Commissioner (Appeals) Ahmedabad granted refund to parties who were not the party in Mohit Mineral Case.

6.1 Further all import services pertains to ocean freight so it can match from all their documents which have been submitted along with the written submissions. In view of the above refund is admissible to Indian Potash.It is further submitted that refund of ocean freight have been sanctioned and granted in other states to M/s. Indian Potash. In view of the above appeal may be allowed. No DIN number, No personal hearing was granted, but it is mentioned that no one appeared in impugned order and the impugned order also was not in proper format.

DISCUSSIONS AND FINDINGS

7. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. First and foremost, I would like to take up the issue of filing the appeal and before deciding the issue of filing the appeal on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:
SECTION 107. Appeals to Appellate Authority.-

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and

Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) .. (3) . (4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month. -

7(i).. I observed that in the instant case that as against the impugned order dated 16.12.2002, the appeals has been filed on 14.03.2023 which is within the normal period prescribed under Section 107(1) of the CGST Act, 2017.

8. I find that the appellant had originally claimed refund of IGST paid on ocean freight under reverse charge basis, which has been rejected by the adjudicating authority, on the ground that the claimant had neither appeared in personal hearing not submitted any reply to in GSTRFD-09 by relying upon the Hon'ble High Court of Kerala in case of S.I. Property Kerala Pvt Ltd., vs. CCE, Thiruvananthapuram. Being aggrieved by the said order, the appellant approached the First Appellate for relief. The Additional Commissioner (Appeals), Ahmedabad vide his OIA No.AHD-CGST-001-APP-ADC-147 to 160/22-23 dated 18.11.2022 set aside the refund order without going into the merit of all other aspects and also directed the appellant to submit all relevant documents/submissions before the adjudicating authority.

9. The appellant then filed the instant refund claim which was again rejected by the adjudicating authority vide impugned order on the grounds the appellant had neither appeared in personal hearing and the Supreme Court in the case of Mafatal Industries Ltd., 1997[89ELT 247 (SC) held that when any such provision in the statue has been held to be unconstitutional, refund of tax under such statue will be outside the scope of and purview of such enactment (in present case, GST Act) and under such circumstances, refund can only be claimed by way of a suit or by way of a writ petition.

10. The refund claim has been filed by the appellant due to the outcome of the Hon'ble Gujarat High Court in the case of M/s. Mohit Minerals Pvt. Ltd.[2020 [33] G.S.T.L. 321'(Guj.)] wherein it is held that *"The impugned Notification No.8/2017-Integrated Tax (Rate) dated 28th June 2017 and the Entry 10 of the Notification No.10/2017 - Integrated Tax (Rate) dated 28th June 2017 are declared as ultra vires the Integrated Goods and Services Tax Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional. Civil Application, if any, stands*



disposed of.

10. I find that the appellant in the present appeal contended that the impugned order was passed without giving reasonable opportunity of being heard to present the case appropriately, which is gross violation of principle of natural justice. **The adjudicating authority in his impugned order has clearly mentioned that personal hearing was granted on 03.02.2023, however the appellant did not appear but filed reply to the SCN issued. Hence, the question of violation of principle of natural justice do not arise in the present case, as the appellant himself opted to stay absent on the day of personal hearing.**

11. The appellant in their appeal have mentioned that no Din number was mentioned over the Show Cause Notice and the impugned order as required as per Circular No. Circular No.128/47/2019-GST dated 23.12.2019 whereby the Board had specified that the DIN monitoring system would be used for incorporating a DIN on search authorisations, summons, arrest memos, inspection notices etc. to begin with. **However, on scrutiny of documents furnished by the appellant, I find that the show cause notice has been uploaded in the portal in proper form RFD-08 and the impugned order has also been issued appropriately through the portal in form RFD-06. Hence, the requirement of issuing DIN does not arise where the communication of the show cause notice and the impugned order has been done through the official portal. In view of the same, I find that the contention of the appellant in this aspect is not a valid point to consider.**

11. The Joint Commissioner (Appeals) vide his OIA dated 18.11.2022 had once sent back the refund claim to the adjudicating authority for violation of principle of natural justice, and directed him to follow appropriate procedure as per Circular No.128/47/2019-GST dated 23.12.2019. Accordingly, the adjudicating authority before deciding the instant issue had fixed personal hearing on 03.02.2023, however the appellant did not appear but filed reply to the SCN issued. Hence, the question of violation of principle of natural justice do not arise in the present case, as the appellant himself opted to stay absent on the day of personal hearing. **Thus, an opportunity to the appellant to be heard was already given to them.**

12. I also find that the adjudicating authority has not mentioned anything about the limitation period of the refund claim filed by the appellant. **Therefore, the adjudicating authority is hereby directed to process the refund application of the appellant and also verify the admissibility of the refund claim in respect of period of limitation.**

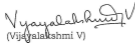
13. In view of the above facts and discussions, the impugned order passed by the adjudicating authority is set aside for being not legal and proper and accordingly, I allow the appeal filed by the appellant. The

appellant is also directed to submit all relevant documents/submissions before the Refund Sanctioning Authority.

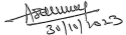
21. अधीलकर्ता द्वारा दर्ज की गई अधील का निपटारा उपरोक्त तरीके से किया जाता है।

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

//Attested//


(Vijayalakshmi V)

Superintendent (Appeals)


30/10/2023
(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: .10.2023

By RPAD
M/s. Indian Potash Limited
No.45, Potash House, Drive-in-Road,
Near Vijay Cross Road, Navrangpura, Ahmedabad-380009



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 Dy/Assistant Commissioner, CGST, Division-VI, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

