



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- 20231164SW0000039306

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1697/2023 -APPEAL 18284-88

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 150 /2023-24

दिनांक Date :30.10.2023 जारी करने की तारीख Date of Issue : 20.11.2023

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. GEXCOM/RFD/GST/58/2023-CGST-DIV-1-COMMRTE-AHMEDABAD Dt.30.03.2023 issued by The Assistant Commissioner, CGST, Division-I Rakhial, Ahmedabad South.

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

Appellant	Respondent
M/s. Flora Infrastructure, 353, New Cloth Market, Raipur Darwaja, Ahmedabad, Gujarat	Assistant Commissioner, CGST & CX, Div-I Rakhial, 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) <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 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

Brief Facts of the Case :-

This appeal has been filed by M/s. Flora Infrastructure, Sapath Heights, Opp. Sopan Nr. Gayatri Mandir, Kalol, Gandhingar, Gujarat-382721 (hereinafter referred to as "Appellant") against the Speaking Order F.No. GEXCOM/RFD/GST/58/2023-CGST-DIV-1-COMMRTE-AHMEDABAD(S) dated 30.03.2023 issued by the Assistant Commissioner, Division I(Rakhial), Ahmedabad South(hereinafter referred to as " Adjudicating officer")

2(i). Facts of the case, in brief, are that the appellant, having Service Tax Registration no. AADFF5352RSD001 were served the Show Cause Notice No. ADT/CIR-X/AP-64/01/Flora/19-20 dated 12.06.2022. The said SCN was adjudicated vide the OIO No. KLL DIV/ST/Paras Mani Tripathi/85/2021-22 dated 29.03.2023 confirming the demand and recovery of Service Tax amounting to Rs. 7,76,250/-. The appellant being aggrieved the the said OIO dated 29.03.2022 had filed appeal with the Commissioner(A) Ahmedabad. The appellant received Letter F.No. GAPPL/COM/STP/1087/2022-APPEAL dated 24.11.2022 from the Office of Commissioner(A), Ahmedabad informing that in pursuance of Boards Instruction dated 28.10.2022 issued vide F.No. CBIC-24/17/14/2022-Service Tax Section-CBIC, the payment through DRC-03 under the CGST regime is not valid mode of payment for making pre-deposit under Section 35F of the CEA 1944 and Section 83 of the Finance Act, 1994. It was requested to make pre-deposit in the subject appeal in terms of Boards Circular No. 1070/3/2019-CX dated 24.06.2019. Accordingly, the appellant made the payment of Pre-deposit under the head of Service Tax for the amount of Rs. 58,219/-.

2(ii) The Appellant had filed the claim of refund amounting to Rs 58,219/- vide RFD-01(AD2405220041080) dated 10.05.2022 for the amount already pre-deposited under the head of CGST Vide DRC-03 as they had once again pre-deposited the said amount i.e. Rs, 58,219/- under the head of Service Tax. The appellant were served upon SCN in form GST-RFD-08 dated 15.03.2023 proposing rejection of the said refund claim. The Appellant had submitted reply to the SCN(RFD-08) dated 15.03.2023 vide RFD-GST-09 on 17.03.2023. The Adjudicating authority vide impugned order rejected the refund claim on the ground that the appellant is not registered with GSTN (registration of the GSTIN was cancelled w.e.f. 01.07.2017) and claim period of the instant claim is may-22 and also that the claimant has claimed refund of pre-deposit made in Service Tax Matters.

3. Being aggrieved with the said impugned order dated 30.03.2023, the appellant have filed the present appeal on 15.05.2023 on the following grounds:-

- That the refund claim has been filed under Section 54 of CGST Act, 2017 and provisions of section 54 says that any persona claiming refund of any tax and interest may make an application before the expiry of two years from the relevant date in form prescribed. As per the said section, it is not mandatory that only GST registered person can apply for refund of Tax amount.
- The applicant was having GST registration at the time of making pre deposit of amount Rs. 58219/- but later on the department has cancelled GST registration with effect from 01.07.2017.
- That the adjudication authority has erred by rejecting the refund claim on the ground of not having the GST Registration at the time of filling the refund claim as such provision of Section does not restrict the person who is not having the GST registration at the time of sanctioning the refund claim as at the time of making pre-deposit appellant was having GST registration.
- That the amount of refund claim was paid as pre deposit for filling of appeal with Commissioner(A) in the matter of Service Tax therefore the rejection of refund claim is legally not correct.
- That the adjudicating authority has not mentioned the legal provision under which the appellant is not eligible to claim refund of pre-deposit in the case where GST number has been cancelled by the department from the past period. The reason of rejection is not supported by any provisions of GST Law therefore, the order is bad in the eye of the law and required to be set aside.
- The rejection of refund claim of such pre-deposit amount by the adjudicating authority is illegal as the department cannot retain the tax without authority of law.
- That merely not having GST registration at the time of sanctioning the refund claim does not preclude them to claim the refund of pre-deposit amount as at the time of making pre-deposit and filling the refund claim the appellant was having the GST registration. The pre deposit amount was paid against the Service Tax Demand and not against GST demand. Therefore the order of the adjudication authority is incorrect and required to be set aside for the sake of justice.
- That they have claimed the pre-deposit amount of Rs 58219/- which was paid twice, one under the CGST head and another under the service Tax head. The mode of payment under CGST head through DRC-03 was not considered as valid mode of payment therefore the amount of Rs 58219/-



paid under CGST has been claimed as refund and the nature of amount paid is 'pre-deposit' and not tax therefore the department cannot retain the said amount.

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

- Hon'ble Joint Commissioner(Appeal) may please to set aside the impugned order dated 30.03.2023 rejecting the refund claim of Rs. 58,219/-
- Hon'ble Joint Commissioner(Appeal) may please to allow the Refund of Pre-deposit amount of Rs. 58,219/-.
- Hon'ble Joint Commissioner(Appeals) may please to pass any others relief as deemed fit.

PERSONAL HEARING:

4. Opportunity of Personal Hearing in the matter was accorded to the appellant on 14.09.2023 wherein Mr. M. H. Raval appeared on behalf of the 'Appellant' and submitted written submissions and reiterated the facts/grounds submitted vide the appeal memorandum and requested that the appeal may be allowed.



DISCUSSION AND FINDINGS :-

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum; during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, rejecting the refund claim of the pre-deposit, in the facts and circumstance of the case, is legal and proper or otherwise.

6. I find that the appellant have made the payment of Pre-deposit twice, one under the GST head vide RFD-03 and the other under Service Tax head. The said fact has not been contended by the adjudicating authority. I find that the adjudicating authority vide the impugned order has rejected the refund claim of the applicant on the ground that the claimant is not registered with the GSTN(registration of the GSTN was cancelled w.e.f. 01.07.2017) and the claim period of the instant claim is May 22.

7. In view of the discussions above, as the appellant has paid the pre-deposit twice and furnished proof of the payment made, I hereby set aside the impugned order passed by the adjudicating authority being not legal and proper. Therefore, I hereby direct the Refund Sanctioning Authority to refund the pre-deposit of Rs. 58219/- along with interest, to the appellant. The

appellant is also directed to submit all the submissions to the adjudicating authority as required in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

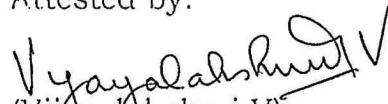
8. अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Dated: .10.2023

Attested by:


(Vijayalakshmi V)
Superintendent,
CGST Appeals,
Ahmedabad.



By R.P.A.D.

To,

M/s. Flora Infrastructure,
Sapath Heights, Opp. Sopan Nr. Gayatri Mandir,
Kalol, Gandhinagar, Gujarat-382721.

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 I(Rakhial), Ahmedabad South.
4. The Assistant Commissioner (Systems), Central GST & Central Excise, Ahmedabad South.
5. Guard File.
6. P.A.



