



12.04.2022

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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टेलीफैक्स:07926305136



DIN- 202311645W0000333DBF

रजिस्टर्ड ऑफ ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2943/2023-APPEAL / 8509-1A

ख अपील आदेश संख्या Order-in-Appeal Nos. AHM-CGST-001-APP-JC- 158 /2023-24

दिनांक Date :22.11.2023 जारी करने की तारीख Date of issue : 28.11.2023

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. ZL2405230024219 dated 02-05-2023 issued by The Assistant Commissioner, CGST & CX, Div-VI, Ahmedabad South.

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

Appellant	Respondent
M/s Anihar Global Private Limited, 3RD FLOOR, 308, Sukun Business Centre, Swastik Char Rasta, Opp Jain Dalry, Navrangpura, Ahmedabad, Gujarat, 38000	The Assistant Commissioner, CGST & CX, Div-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 (Rinsh 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)	उपरोक्त 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. Anihar Global Private Limited, 3rd Floor, 308, Sukun Business Centre, Swastik Char Rasta, Opposite Jain Diary, Navrangpura, Ahmedabad, Gujarat : 380009 (hereinafter referred to as the "appellant") has filed the following present appeal on 30.06.2023 against Refund Rejection Order No. ZL2405230024219 dated 02.05.2023 (hereinafter referred to as the "impugned refund order") amounting to Rs. 51,04,927/- passed by the Assistant Commissioner, CGST, Division - VI (Vastrapur), Ahmedabad South Commissionerate (hereinafter referred to as the "adjudicating authority") rejecting refund claim filed by the appellant.

2. Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AAICR4652C1ZL, has filed refund claim vide ARN No. AA240323020197N dated 06.03.2023 for Rs. 51,04,927/- under the category "Any other" against ITC accumulated on account of export with payment of tax. The appellant was issued Show Cause Notice (SCN) on dated 27.03.2023 proposing rejection of refund on the following grounds:

"Said claimant has failed to produce documentary evidence in respect of admissibility of said refund claim required under Rule 89 and 96 of CGST Rules 2017, Circular 15/44/2019-GST dated 18.11.2019 and Instruction 04/2022-GST dated 11.11.2022 issued by GST Policy Wing, CBIC."

Further, the adjudicating authority passed the impugned Order No. ZL2405230024219 dated 02.05.2023 and reject the claim amounting to Rs. 51,04,926/- for the following reasons :

- that said claimant is marked as Risky Exporter as per DGARM Report No. 21AM, and as per Instructions No. 04/2022- GST dated 28.11.2022, jurisdictional proper officer shall process refund of such exporter under the provision of Rule 89 of CGST Rules 2017.
- that during the verification of said refund claim, some discrepancies were observed and a SCN vide RFD-08 No. ZI2403230437728 dated 27.03.2023 was issued to the claimant. Personal Hearing in the matter was fixed on 31.03.2023. However, said claimant has neither filed reply of said SCN nor appear for personal hearing.
- that Superintendent, AR-IV, Division-VI vide letter dated 25.04.2023 has submitted that DGGI, AZU, Ahmedabad vide letter dated 02.08.2021 has informed that said claimant has been involved in fake ITC and requested not to disburse any refund to said claimant till the clearance from their offices.



- that Principle of Natural justice has been followed by issuing Show Cause Notice and granting Personal Hearing to the said claimant in present case. However, no response received from the said claimant. In absence of any reply to the said SCN dated 27.03.2023 from the claimant, the genuineness of the claim could not be ascertained. Further, said claimant is involved in case of fake ITC and matter is under investigation. Therefore the said refund claim is liable for rejection.

3. Being aggrieved with the impugned order, the appellant preferred present appeal on 02.05.2023 on the following grounds:

- (i) The Respondent has passed the impugned order on 02.05.2021, without considering the Principles of Natural Justice of giving an proper opportunity of being heard;
- (ii) Vague and Unclear Show cause Notice;
- (iii) Impugned order without proper opportunity of being heard The impugned order to the extent it is against the Appellant, has been passed on the basis of assumptions, presumptions, conjectures and surmises and without proper consideration of facts, records, opportunity of being heard, and is therefore, liable to be set aside, to the extent the impugned order is against the Appellant;
- (iv) Ground 1: Compulsory sanction of Provisional Refund BHAGYANAGAR COPPER PRIVATE LIMITED Vs THE CENTRAL BOARD OF INDIRECT TAX AND CUSTOMS AND 5 OTHERS (HIGH COURT FOR THE STATE OF TELANGANA WRIT PETITION No. 15804 of 2021)
- (v) The order passed by the Respondent to the extent of rejection of refund amount of Rs 51,04,927/- may please required to be quashed and set aside in the interest of justice and refund of accumulated ITC may please be granted and Interest on delayed sanction of refund under Section 56 of the CGST Act 2017 be granted to the appellant.



PERSONAL HEARING :

4. Personal Hearing in the matter was held on 25.10.2023. Mr. Jaykishan K. Vidhwani, C.A., appeared as authorized representative. During Personal Hearing he has stated that in the identical issue, the order has already been passed by the Additional Commissioner (A), OIA No. AHM-CGST-001/APP-ADC-140/2022-23 dated 21.10.2022. Further they have relied upon Hon'ble Gujarat High Court order in case of M/s. Choksi Exports Vs 001 SCA No. 23798 of 2022 and Hon'ble High Court of Telangana Writ Petition No. 15804 of 2021 wherein it was held that 90% of

the refund under Section 54(6) shall be allowed. He further re-iterated the written submissions and requested to allow appeal.

DISCUSSION AND FINDINGS:

5. I have gone through the facts of the case, written submissions made by the 'appellant' along-with appeal memorandum and available records. The main issue to be decided in the instant case is whether the refund application filed by the appellant in respect of ITC accumulated on account of export without payment of tax is allowed or not as per the provisions under the CGST Act, 2017.

6. In the instant case appellant has contended that the impugned order dated 02.05.2023 has been passed without considering the Principles of Natural Justice of giving an proper opportunity of being heard. However, it is observed that Personal Hearing was fixed on 31.03.2023, however the appellant has neither filed reply of SCN nor appear for personal hearing. In view of the above it is observed that in the instant case natural justice has been followed before issuance of order.

7(iii) Further, in the instant case adjudicating authority is contending that the appellant is marked as Risky Exporter as per DGARM Report No. 21AM, and as per Instructions No. 04/2022- GST dated 28.11.2022, jurisdictional proper officer shall process refund of such exporter under the provision of Rule 89 of CGST Rules 2017. Further it is observed that Superintendent, AR-IV, Division-VI vide letter dated 25.04.2023 has submitted that DGGI, AZU, Ahmedabad vide letter dated 02.08.2021 has informed that said appellant has been involved in fake ITC and requested not to disburse any refund to said claimant till the clearance from their office. However, the adjudicating authority has not mentioned about the outcome of the letter dated 02.08.2021 issued by DGGI, AZU, Ahmedabad and also no such documents are available in this office.

7(iv). In this regard the appellant have relied upon case of M/s. Choksi Exports vs. Union of India and M/s. Bhagyanagar Copper Pvt Ltd Vs. The CBIC and others Hon'ble High Court of Telangana Writ Petition No. 15804 of 2021 wherein it was held that 90% of the refund under Section 54(6) shall be allowed whether the suppliers of the suppliers (L2) are identified as suspicious suppliers, the said suppliers and the value of ITC availed is less than 10% of the total ITC availed the respondents ought to have granted provisional refund to the petitioner to the extent of 90% as provided under Section 54(6) read with Rule 91 of the CGST Rules.




8. Further department contended that the appellant has failed to produce documentary evidence in respect of admissibility of said refund claim required under Rule 89 and 96 of CGST Rules 2017, Circular 125/44/2019-GST dated 18.11.2019 and Instruction 04/2022-GST dated 28.11.2022 issued by GST Policy Wing, CBIC. In this regard appellant has stated that before the issuance of show cause notice the appellant had only exported goods and submitted shipping bill which is deemed refund application as per the provisions of Rule 96(1) of CGST Rules.

9. In view of above discussions, I allow the appeal of the "Appellant" with a direction to submit all the relevant documents/submission before the refund sanctioning authority for verification of the facts, who shall verify the facts and outcome of investigation/clearance from DGGI as mentioned in the Order in Original and pass the order accordingly.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त शर्तों से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.


(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 27.11.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)



By R.P.A.D.

To
M/s. Anihar Global Private Limited,
3rd Floor, 308, Sukun Business Centre,
Swastik Char Rasta, Opposite Jain Diary,
Navrangpura, Ahmedabad, Gujarat : 380009

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Ahmedabad South Commissionerate.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division-VI (Vastrapur), Ahmedabad South Commissionerate.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the website.
6. Guard File.
7. P.A. File.



