



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.

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DIN- 20231264SW000000C68F

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2948/2023 -APPEAL /930 -95

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 160 /2023-24

दिनांक Date : 30.11.2023 जारी करने की तारीख Date of Issue : 01.12.2023

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. ZJ2405230281719 dated 18.05.2023 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 Technomine, 4th Floor, 405, Shoppers Plaza -Iv, Opp. Bsnl Tele. Exchange, C.G. Road, Navrangpura, Ahmedabad, Gujarat, 380009	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 (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 :**

M/s. Technomine, 4th Floor, 405, Shoppers Plaza-IV, Opp.BSNL Tele. Exchange, C.G.Road, Navrangpura, Ahmedabad, Gujarat 380009 (hereinafter referred to as 'the appellant') has filed appeal on 16.06.2023 against the Refund Rejection Order No.ZJ2405230281719 dated 18.05..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 fact of the case is that the appellant is registered under GSTN No.24AAFFT4709C1ZI had filed refund claim of Rs.4,27,462/- for the period 01.10.2020 to 31.03.2021 for refund of ITC accumulated due to export of goods/services without payment of tax on dated 23.03.2023. On verification of the refund claim, certain discrepancies have been noticed such as :

- i. Value of Zero-rated turnover declared in Statement 3A is 3,92,17,905/-. However, value of FIRC received is only 3,90,28,342/-.
- ii. On going through Annexure-B, it appears that ITC of capital goods, is taken which is not allowed in terms of Rule 89(4) of CGST Rules, 2017; Copy of GSTR-2B for relevant period has been not provided.



Further, the 'Appellant' was asked to furnish reply to the SCN within 15 days from the date of service of SCN and a personal hearing was also offered to the 'Appellant' on 08.05.2023 15.00 hrs. Thereafter, the adjudicating authority vide his impugned order rejected the refund claim of Rs.4,27,462/- in form RFD-06 on the following grounds:-

- ❖ In spite of fixing personal hearing on 08.05.2023, the appellant did not appear and had not filed any defense reply and hence the correctness and eligibility of the refund of tax to the claimant remained unascertained.

3. Being aggrieved with the "impugned order" the 'Appellant' has filed the present appeal on 16.06.2023 on the following grounds:-

- ❖ The adjudicating authority had rejected the refund claim in spite of details of ITC on Inputs and Input service and on Capital Goods submitted by the appellant in Annexure 'B'. Thus, the adjudicating authority failed to consider the records available with RFD-01. The appellant has prayed to sanction the ITC refund claim amounting Rs.4,27,462/- and furnished relevant documents along with their appeal memorandum.

Personal Hearing

4. Personal Hearing in the matter was held on 25.10.2023 wherein Sh. Anisahmed Ahmediya Saiyed and Shri Jaycsh Kantilal Suthar, both Accountants appeared on behalf of the 'Appellant' as authorized representative. During P.H. they reiterated that they have submitted all documents before the refund sanctioned authority. It is further submitted that they have not claimed any refund for Capital Goods credit. They have sought adjournment from the Asst. Commissioner, but the order has been passed without giving any personal hearing or any speaking order based on the facts/documents submitted. He further submitted calculation of admissible refund. In view of the above, requested to allow appeal.

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 preferred the refund application on account of "Refund of ITC on Export of Goods & Services without Payment of Tax" for the amount of Rs.4,27,462/-.

6. First of all, 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,



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.

6.1 I observed that in the instant case that as against the impugned order of dated 18.05.2023, the appeal has been filed on 16.06.2023 i.e. appeal filed in the normal period prescribed under Section 107(1) of the CGST Act, 2017. I proceed further to decide the case.

7. In response to said refund application a Show Cause Notice was issued to them proposing rejection of refund claims for reasons mentioned as "difference between FIRC and Statement 3A furnished" "ITC of Capital Goods

have been availed which is not allowed in terms of Rule 89(4) of CGST Rules, 2017" "copy of GSTR-2B has not been provided". Further in response to the personal hearing scheduled on 08.05.2023, the appellant stated during personal hearing on 25.10.2023 that they had sought for adjournment but without considering their request the impugned order has been passed. The supporting documents provided along with RFD-01 refund claim was also not considered by the adjudicating authority and rejected their refund claim just on the grounds that they didn't appear for personal hearing and failed to file reply to the show cause notice. Further, the appellant had submitted copy of the calculation of the admissible refund amount as per their records.

8. I find that the appellant is contending that the Impugned Order is issued without being heard them inspite of submitting letter for adjournment; that therefore, without personal hearing to justify the claim, rejection of entire refund claim is unjustifiable and unwarranted. I find that in the case pertaining to *M/s. Aluminium Corporation of India Versus Union of India 1978 (2) E.L.T. (J 320) (SC)*, wherein it is held that sufficient, fair and reasonable opportunity must be given to the appellant before passing of the order. Hence, I find it relevant to refer Rule 92(3) of the CGST Rules, 2017 according to which "no application for refund shall be rejected without giving the applicant an opportunity of being heard". In the present case I find that the adjudicating authority has offered a P.H. on 08.05.2023 however, the appellant could not attend the PH on given date, had requested for adjournment and the adjudicating authority has rejected the refund application without providing any further opportunity of PH to the appellant. Further, the impugned order for rejection of refund application was issued merely on the grounds that they didn't appear for personal hearing and failed to file reply to the show cause notice.

9. Therefore, I find that the *adjudicating authority* has violated the principle of natural justice in passing the *impugned order* vide which rejected the refund claim without being heard the *appellant* 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 of personal hearing in the matter to the '*Appellant*' 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

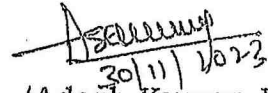


justice. The 'Appellant' is also directed to submit all relevant documents/submission before the *adjudicating authority*.

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.

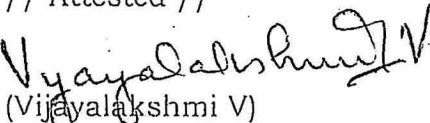
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: .11.2023

// Attested //


(Vijayalakshmi V)
Superintendent (Appeals)
Central Tax, Ahmedabad.

By R.P.A.D.

To

M/s. Technomine
4th floor, 405 Shoppers Plaza-IV,
Opp.BSNL Tele. Exchange,
C.G.Road, Navrangpura
Ahmedabad, Gujarat 380 009.

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



