



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- 20231264SW0000406742

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2740/2023 -APPEAL

19787 - 91

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 166 /2023-24

दिनांक Date :29.11.2023 जारी करने की तारीख Date of Issue : 06.12.2023

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. ZJ2404230249741 dated 19.04.2023 issued by The Assistant Commissioner, CGST & CX, Division VI, Ahmedabad South.

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

Appellant	Respondent
M/s Fasttrips, (Legal Name: Prachiti Brijesh Salvi), 3rd Floor, 314, Tulsi.Complex, Mithakhali Six Road, Ahmedabad, Ahmedabad, Gujarat, 380009	The Assistant Commissioner, CGST & CX, , 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) <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. Fasttrips, (Legal Name: Prachiti Brijesh Salvi), 3rd Floor, 314, Tulsi Complex, Mithakhali Six Road, Ahmedabad, Gujarat-380009 (hereinafter referred to as "Appellant against the Order in Original No. ZJ2404230249741 dated 19.04.2023 issued by the Assistant Commissioner, Division -VI, Ahmedabad South (hereinafter referred to as "Adjudicating officer") ") in respect of rejection of refund application amounting to Rs. 3,84,135/- for the period Feb -23.

2(i). Facts of the case, in brief, is that the appellant, having Service Tax Registration no. DUGPS5907DSD001 had filed an appeal against O.T.O no. 02/ADC/GB dated 27.04.2022 wherein there was demand for service tax. While filing the Commissioner (Appeal) for service tax demand, the appellant had made pre-deposit @7.5% under GST regime and accordingly DRC-03 generated for amount of Rs.3,84,135/- vide ARN. AD240622007237G dated 18.06.2022. The appeal was admitted with the said DRC-03 generated for pre-deposit. Afterwards, the instruction was issued for, pre-deposit payment method for cases pertaining to Central Excise and Service Tax vide no. CBEC/240137/14/2022-SERVICE TAX SECTION-CBEC dated 28.10.2022 wherein it is clarified that payments through DRC-03 under CGST regime is not a valid mode of payment for making pre-deposit u/s. 35F of the Central Excise Act, 1944 and Sec.83 of Finance Act, 1994 read with section 35F of CEA. As per the said circular, the appellant again made pre-deposit of Rs.3,84,135/- under service tax on 16.03.2023 for the same appeal and submitted the intimation regarding payment of the said pre-deposit under service tax regime. The appeal is pending as on date. As the appellant made payment of pre-deposit under service tax as per the new instruction issued by the CBEC, the appellant filed the refund claim for pre-deposit made under GST regime as per old method. The appellant had made pre-deposit of Rs.3,84,135/twice; one time under GST regime through DRC-03 & second time under service tax.

3. Further Show Cause Notice vide RFD-08 No. ZG2403230535673 dated 31.03.2023 was issued to the appellant on the following grounds:-

- (i) *Said claimant has applied refund in category of any other (specify) without mentioning detailed ground for filing refund application.*
- (ii) *From grounds of refund claim mentioned in the system, it seems that amount of refund pertains to pre deposit paid during filing appeal with Commissioner(A), Ahmedabad, However, it is not forthcoming whether appeal has been decided or not.*

- (iii) Said claimant has not submitted certification under rule 89(2)(m) as prescribed in Circular 125/44/2019-GST dated 18.11.2019, certification under rule 89(2)(m)

4. Further, the said SCN was adjudicated vide the OIO No. ZJ2404230249741 dated 19.04.2023 and rejected the refund application amounting to Rs. 3,84,135/- for the period Feb -23 on the following grounds:-

- that said claimant has not submitted any reply to Para 1 of SCN dated 31.03.2023. In absence of reply of said claimant, genuineness of the claim could not be ascertained;
- that said claimant has not submitted any reply to Para 2 of SCN dated 31.03.2023. In absence of reply of said claimant, genuineness of the claim could not be ascertained.
- that said claimant has replied that they attached Copy of CA certificate under rule 89(2)(m). However, I find that no such revised CA certificate are found with their reply dated 04.04.2023. Further, it is worth to mentioned that CA certificate under rule 89(2)(m) is a mandatory document in terms of Circular No.125/44/2019-GST dated 18.11.2019;
- that the claimant has submitted incomplete reply to the SCN dated 31.03.2023. That in absence of supporting evidence/CA certificate under rule 89(2)(m), the genuineness of the claim could not be ascertained and hence the refund claim is liable for rejection.

Being aggrieved with the said impugned order dated 19.04.2023, the appellant have filed the present appeal on 06.06.2023 on the following grounds:

- The appellant deny all the allegations/ observations raised in the order for disallowance of refund claim on the basis of the submissions made below which are independent and without prejudice to each other;
- when the appellant had made pre-deposit amount as per new method under service tax as per circular, the appellant was eligible for the refund of pre-deposit paid as per old method or not.
- That they had filed an appeal against 010 no. 02/ADC/GB dated 27.04.2022 wherein there was demand for service tax. While filing the Commissioner (Appeal) for service tax demand, the appellant had made pre-deposit @7.5% under GST regime and accordingly DRC-03 generated for amount of Rs.3,84,135/- vide ARN. AD240622007237G dated 18.06.2022. The appeal was admitted with the said DRC-03 generated for pre-deposit. Afterwards, the instruction was issued for, pre-deposit payment method for cases pertaining to Central Excise and Service Tax

vide no. CBIC/240137/14/2022-SERVICE TAX SECTION-CBEC dated 28.10.2022 wherein it is clarified that payments through DRC-03 under CGST regime is not a valid mode of payment for making pre-deposit u/s. 35F of the Central Excise Act, 1944 and Sec.83 of Finance Act, 1994 read with section 35F of CEA. As per the said circular, the appellant again made pre-deposit of Rs.3,84,135/- under service tax on 16.03.2023 for the same appeal and submitted the intimation regarding payment of the said pre-deposit under service tax regime. The appeal is pending as on date. As the appellant made payment of pre-deposit under service tax as per the new instruction issued by the CBEC, the appellant filed the refund claim for pre-deposit made under GST regime as per old method. The appellant had made pre-deposit of Rs.3,84,135/twice; one time under GST regime through DRC-03 & second time under service tax;

- the appellant is rightly eligible for the refund claim. The appellant hereby request you to allow the refund claim in the interest of law and justice;

In view of above submissions the appellant has made prayer to allow the refund claim of Rs. 3,84,135/-.



PERSONAL HEARING:

Opportunity of Personal Hearing in the matter was accorded to the appellant on 06.10.2023; 19.10.2023 and 30.10.2023 wherein Mr. Vipul Khandar and Mr. Priyank Shukla, C.A., appeared on behalf of the 'Appellant' and submitted that this is refund case of Pre deposit made under DRC-03. Again the pre-deposit have been made under Service Tax challan. Further it is also submitted that the relevant O-I-O of S.Tax matter has also been set aside, though it is not relevant. It is case of double payment pre-deposit; therefore deposit under DRC-03 is refundable. In view of above and written submissions and additional submissions the O-I-O may be set aside and allow appeal.

DISCUSSION AND FINDINGS :-

7. 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.

8. 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 appellant has not submitted proper reply to the SCN dated 31.03.2023 and also not submitted revised CA certificate.

9. 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. I allow the appeal of the "Appellant" with a direction to submit all the relevant documents before the Refund Sanctioning Authority, as required in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017, for verification of the facts, who shall verify the facts as directed above and pass order accordingly

10. 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
29/11/2023

(Adesh Kumar Jain)

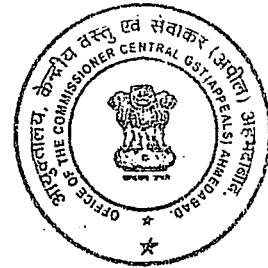
Joint Commissioner (Appeals)

Date: 29.11.2023

Attested

Sandheer Kumar

(Sandheer Kumar)
Superintendent (Appeals)



By R.P.A.D.

To,

M/s. Fasttrips, (Legal Name: Prachiti Brijesh Salvi),
3rd Floor, 314, Tulsi Complex, Mithakhali Six Road,
Ahmedabad, Gujarat-380009.

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 Superintendent (Systems), Central GST & Central Excise, Appeals, Ahmedabad.
5. Guard File.
6. P.A.

