



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/3274/2023/19643-50
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-001-APP-JC-179/2023-24 and 12.12.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	14.12.2023
(ङ)	Arising out of Order-In-Original No. ZL2405230118875 dated 09.05.2023 passed by The Assistant Commissioner, CGST & CX, Div-II - Vatva-1, Ahmedabad South.	
	Name of the Appellant	Name of the Respondent
(च)	M/s Cirwind Packaging Machinery, 1902, GIDC Estate, GIDC Vatva, Ahmedabad, Gujarat, 382445	The Assistant Commissioner, CGST & CX, Div-II - Vatva-1, 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. Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying -
(i)	(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 अपील प्रधिकारी 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. Cirwind Packaging Machinery, 1902, GIDC Estate, GIDC Vatva, Vatva, Ahmedabad, Gujarat - 382445, (hereinafter referred as 'appellant') has filed the present appeal on 08.08.2023 against the Order No. ZL2405230118875 dated 09.05.2023 passed in the Form-GST-RFD-06 (hereinafter referred as 'impugned order') rejecting refund of Rs.2,90,960/-, issued by the Assistant Commissioner of CGST & C. Ex., Division - II - Vatva-1, Ahmedabad South Commissionerate (hereinafter referred as 'adjudicating authority').

2. The facts leading to this case are that the appellant is engaged in the business of Manufacturing and Trading of Machinery and Machinery Parts. The appellant vide Form GST RFD 01 (having ARN AA240323026097L dated 09.03.2023) applied for refund of CGST amounting to Rs. 2,90,960/-. Further, while filing refund application the appellant had wrongly uploaded the 54 invoices of other firm in GSTR-1 return of the month of January 2022. However, they filed GSTR-3B correctly and made payment of tax accordingly. While filing GSTR-1 return of feb-2022, they made amendments towards wrongly uploaded invoices in feb-2022 GSTR-1 return and nullified the wrongly uploaded 54 invoices but while filing the GSTR-3B return for the month of feb-2022 they made payment of tax for Jan-2022 and Feb-2022 both. Therefore, the appellant made excess payment of Rs. 2,90,960/-.

3. While verification of refund claim, it was noticed that in table 9A of the GSTR-1, there were showing only number of invoices i.e. 54 for amendment but not any details regarding turnover and tax were showing. Therefore, the SCN dated 08.05.2023 with remarks of "Amendments as mentioned in refund application does not reflect in the GSTR-1 return of Feb-2022." was issued to the claimant. The impugned Show Cause Notice has been adjudicated by the adjudicating authority vide the impugned order dated 24.05.2023. The adjudicating authority has passed the impugned order, which is briefly summarized as below:

- that in table 9A of the GSTR-1, there were showing only number of invoices i.e. 54 for amendment but not any details regarding turnover and tax were showing;
- While going through the refund claim and reply submitted by the claimant to the SCN, it is noticed that the details of the amendments in table 9A of the GSTR-1 return of feb-2022 were not seen. The table 9A



of the GSTR-1 return for feb-2022 (as submitted by the claimant) contains only number of invoices i.e. 54 with zero value and tax;

- the list of 54 invoices (with zero value and tax) were found in the table B2BA of GSTR-1 as downloaded on the system. Further, GSTR-2A for the month of feb-2022 of one of the recipient taxpayers of the claimant, having GSTN NO. 24AATFS3854P1.ZA falling under jurisdiction, of this office was checked and found that there was no effect of amendment in the table B2BA of GSTR-2A for the month of feb-2022 as the said table was NIL.

4. Being aggrieved with the impugned order the appellant has preferred the present appeal on the following grounds of appeal:

- that the Impugned Order passed by the Ld. officer, to the extent it is against the Appellant, is *ex-facie* erroneous and bad in law, and the same is liable to be set aside;
- that even if the Ld. officer issued a Show Cause Notice as contemplated in Rule 92, the notice mentions the description for inadmissibility of refund as 'Other'. The Ld. Officer did not provide any other explanation or attachment apart from the above mentioned GST RFD 08 notice which clearly renders the Show Cause Notice as vague and not permissible;
- that the proviso to Rule 92(3) specifically states that no application for refund shall be rejected without giving the applicant an opportunity of being heard; that the Impugned Order is issued in gross violation of the principles of natural justice as the Appellant was not provided the opportunity to provide clarifications/explanation against the already vague allegations raised in the SCN on the basis of which the refund was supposed to be denied. Even though the SCN mentions that the appellant was directed to appear before the Ld. Officer on 09/05/2023 at 11.43 am, when the appellant actually appeared before the Ld. Officer, no Personal hearing was recorded by Ld. Officer and the officer passed the impugned order on 09/05/2023 at 12.34 pm. This, in effect, is as good as no opportunity of being heard was provided. The Appellant hence submits that the Ld. Officer did not grant any personal hearing to the Appellant to substantiate that the Appellant is entitled to refund, and refund has been rightfully claimed. The passing of an order without giving an opportunity of being heard is grossly bad in law;



- that the appellant, at the time of filing the refund application had submitted the following documents to substantiate the claim of refund of excess payment of tax for the month of February 2022:

- Form RFD 01 along with Statement 7 as per Rule 89(2)(k)
- Audited Balance Sheet and Profit and Loss Account for FY 2021-22
- CA Certificate as per Rule 89(2)(m)
- Relevant Extract of Circular No. 125/44/2019 -GST
- Forwarding letter explaining the exact reason of refund.
- GSTR 1 and GSTR 3B for the months of January 2022 and February 2022.
- Refund Summary explaining the calculation of refund.
- Sales Register for FY 2021-22.
- Undertaking under Rule 89(2)(1)
- Undertaking regarding Section 16(2)(c) and Section 42(2).

- that the at the time of submission of refund application, the appellant was required to only submit the documents as specified in Circular 125/44/2019 -GST and the appellant humbly submits that the appellant had provided all the relevant documents accordingly;

- that they had made a mistake in the GSTR 1 of January 2022 by uploading 54 invoices pertaining to our sister concern Cirwind Machine Mfg Co having GSTIN 24AABFC0468M1ZL. Thereafter we corrected our mistake in February 2022 GSTR 1 wherein we nullified the invoices in B2B Amendments Table of our GSTR 1 for February 2022. We have uploaded the B2B Amendments table of GSTR 1 for February 2022 which shows all 54 invoices as nullified; that there is no other option or functionality to delete the invoices already uploaded in the GSTR 1 of previous months apart from nullifying the said invoices by making all their amounts as Nil; that there was no option to pass credit notes against the said invoices as those invoices were never issued by our firm in the first place. The said invoices were only and only uploaded in our GSTR 1 of January 2022 by the mistake of the accountant and return filing executive;

- that we have also uploaded the GSTR 1 vs GSTR 3B comparison as per our GSTN portal which clearly shows that a tax amount of CGST Rs 1,42,203/- SGST Rs 1,42,203 and IGST Rs 6,557/- has been paid in excess during the year. Further, we have also uploaded the GSTR 1 and GSTR 3B of January 2022 of our sister concern Cirwind Machine Mfg Co.

- The GSTR 1 of Jan 2022 contains the same 54 invoices which have been uploaded in the GSTR 1 of Jan 2022 of our firm. Further, the



GSTR 3B of our sister concern clearly shows that a same amount of tax as contained in the GSTR 1 pertaining to the 54 invoices has been discharged in the GSTR 3B amounting to CGST Rs 3,71,531, SGST Rs 3,71,531 and IGST Rs 4,43,113. Thus, the requisite tax for the said 54 invoices has been duly discharged by our sister concern.

- Further, we have already provided our audited Profit and Loss account earlier which perfectly matches with our sales register. None of the 54 invoices features in our sales register. Thus, this is enough evidence that the 54 invoices never belonged to our company and as explained above, the requisite tax for the said 54 invoices has been duly discharged by our sister concern.
- Further we have also attached herewith GSTR 1 for entire FY 2021-22 of our sister concern wherein we have also highlighted the 54 invoices which have been duly reflected in GSTR1 of Jan 2022 by our sister concern. Thus, as evident from the above, our tax has been paid in excess for February 2022 wherein we have made tax payment for our invoices of January 2022 once again.

In view of the above the appellant requested to consider their claim and grant the refund at the earliest.

Personal Hearing :

5. Personal Hearing in the matter was fixed on 21.11.2023 and 08.12.2023. Hearing through virtual mode held on 08.12.2023. Mr. Snehal Thakkar, Chartered Accountants appeared on behalf of the 'Appellant' as authorized representative. During P.H. they have stated that the SCN is given without any specific grounds and it mentioned as "other" only. Further SCN is adjudicated without assigning any P.H. or following Principle of Natural Justice. On merit, he further reiterated the written submissions and submitted that in Annual Return GSTR-9 also the refund due to mistake has been reflected. At the time of filing refund all documents submitted as per Circular 125/2019. In view of above requested to allow appeal.

Discussion and Findings :

6. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal Memorandum dated 09.08.2023. At the outset, it is observed that in the *impugned order* refund claim of Rs.2,90,960/- was denied on the ground that in table 9A of the GSTR-1, there were showing only number of invoices i.e. 54 for amendment but not any details regarding turnover and tax were showing. Further the details of the amendments in table 9A of the GSTR-1 return of feb-2022 were not seen. The table 9A of the GSTR-1 return for feb-2022 contains only number of



invoices i.e. 54 with zero value and tax. The list of 54 invoices (with zero value and tax) were found in the table B2BA of GSTR-1 as downloaded on the system. Further, GSTR-2A for the month of feb-2022 of one of the recipient taxpayers of the claimant, having GSTN NO. 24AATFS3854P1ZA falling under jurisdiction, of this office was checked and found that there was no effect of amendment in the table B2BA of GSTR-2A for the month of feb-2022 as the said table was NIL.

7. In view of the above the appellant contended that at the time of filing the refund application they had submitted the all the documents, as specified in Circular 125/44/2019 -GST to substantiate the claim of refund of excess payment of tax for the month of February 2022. Further, it is observed that while filing refund application the appellant had wrongly uploaded the 54 invoices of other firm in GSTR-1 return of the month of January 2022. While filing GSTR-1 return of feb-2022, they made amendments towards wrongly uploaded invoices in feb-2022 GSTR-1 return and nullified the wrongly uploaded 54 invoices but while filing the GSTR-3B return for the month of feb-2022 they made payment of tax for Jan-2022 and Feb-2022 both. Therefore, the appellant made excess payment of Rs. 2,90,960/-.

Further, I find that the appellant has submitted in grounds of appeal that the Impugned Order is issued in gross violation of the principles of natural justice as the Appellant was not provided the opportunity to provide clarifications/explanation against the already vague allegations raised in the SCN on the basis of which the refund was supposed to be denied. Even though the SCN mentions that the appellant was directed to appear before the Ld. Officer on 09/05/2023 at 11.43 am, when the appellant actually appeared before the Ld. Officer, no Personal hearing was recorded by Ld. Officer and the officer passed the impugned order on 09/05/2023 at 12.34 pm.

9. Considering the above facts, I find that the *appellant* has given compliance to the ground mentioned in the SCN. In this case the claim was rejected only on the ground that copy of invoices not uploaded. Therefore, it transpires that there is no dispute with regard to refund amount. It is observed that the refund claim rejected on the sole ground of copy of invoices not uploaded is not proper. Further, the *appellant* is contending that they have furnished all the documents as specified in Circular 125/44/2019-GST. In view of foregoing, it is observed that the refund claim rejected by the *adjudicating authority* on the ground of 'copy of invoices not uploaded' is not proper and in such situation substantial benefit of refund claim cannot be denied.




10. Further in view of legal provisions, "no application for refund shall be rejected without giving the applicant an opportunity of being heard". In the instant case, on going through copy of the impugned order, it is observed that there is no evidence available on records that in the impugned order an opportunity have been given to the appellant to be heard in person or conducted any personal hearing before passing the impugned order / rejecting the refund claim. This is evident that the adjudicating authority has concluded the refund matter without giving an opportunity of being heard to the appellant. Therefore, it is observed that the adjudicating authority has violated the principle of natural justice in passing the impugned order under which rejected the refund claim without giving the appellant a reasonable opportunity of being heard in terms of Rule 92(3) of the CGST Rules, 2017.

11. 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 provisions of the CGST Act, 2017 and rules made thereunder. The 'Appellant' is also directed to submit all relevant documents/submission before the adjudicating authority. Accordingly, allowed the appeal to that extent only.

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


The appeals filed by the *appellant* stand disposed of in above terms.


(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 12.12.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To,
M/s. Cirwind Packaging Machinery,
1902, GIDC Estate, GIDC Vatva,
Vatva, Ahmedabad, Gujarat - 382445.

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 Deputy/Assistant Commissioner, CGST & C. Ex, Division - II - Vatva-1, Ahmedabad South Commissionerate.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File.



