



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- 20230364SW0000419503

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2529/2022 -APPEAL / 1187-2

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-02/2023-24**

दिनांक Date : **18-04-2023** जारी करने की तारीख Date of Issue : **18-04-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

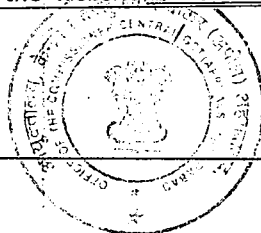
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZG2408220097244 DT. 08.08.2022**, issued by The Assistant Commissioner, CGST, Division-V, Ahmedabad South.

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

Harsh Chander Lakhisarani of M/s. Sagar Marketing, Plot No. 138, Tribhuvan Indu Estate, Road No. 11, Kathwada GIDC, Kathwada, Ahmedabad-382430

(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. Sagar Marketing (Legal Name - Harsh Chander Lakhisarani), Plot No. 138, Tribhuvan Indu Estate, Road No. 11, Kathwada GIDC, Kathwada, Ahmedabad - 382 430 (hereinafter referred as '**Appellant**') has filed the present appeal against the Refund Sanction/Rejection Order in the form RFD-06 bearing No. ZG2408220097244 dated 08.08.2022 (hereinafter referred as '**impugned order**') passed by the Assistant Commissioner, CGST, Division - V, Ahmedabad South (hereinafter referred as '**adjudicating authority**').

2(i). Briefly stated the facts of the case is that the '**Appellant**' is holding GST Registration - GSTIN No.24ADBPL2227N1ZN had filed the refund application under category "*Any other (specify)*" on dated 15.06.2022 for Rs.1,49,859/-. The said refund application is rejected by the '**adjudicating authority**' vide '**impugned order**'. The reason for rejecting refund claim as mentioned in the impugned order is that -

- *The refund claim has not been filed within limitation of time, as provided under CGST Act and Rules.*
- *A Show Cause was issued to the claimant dated 21.07.22 as it seems that the refund is filed under wrong head. Personal Hearing dated 28.07.22 was given to the claimant as the refund appears to be filed under wrong category. The claimant has not replied to the SCN.*
- *In view of above, refund claim filed by applicant is hereby rejected due to non compliance of SCN and refund filed under wrong category of refund and RFD-06 is being issued in AIO.*

2(ii). Being aggrieved with the *impugned order* dated 08.08.2022 the '**Appellant**' has filed the present appeal on dated 26.08.2022 on the following grounds :

- *GST department has conducted Audit for the period July'17 to March'20 and issued Audit Report as on 22.04.22. According to which they have paid CGST and SGST instead of IGST in the month of November 2017. Accordingly, they have paid IGST of Rs.149859/- at the time of GST Audit vide DRC-03 dated 23.03.2022. Therefore, they are eligible for refund of CGST as well as SGST as per Circular No. 162/18/2021-GST dated 25.09.2021.*



- At the time of filing of refund application, there is no specific category to address above issue and hence they have filed refund application under any other and submitted invoice as well as GST Audit Report for reference.
- They have received email regarding notice for seeking clarification on documents/show cause notice (GST RFD-08) as on 21.07.22. However, no notice was attached to that mail. They try to find out on GST Portal but it was not reflected. Due to unavailability of SCN they failed to submit document/clarification on time. Hence, officer has rejected refund application on the ground of non-compliance of SCN and refund filed under wrong category of refund via order dated 08.08.22.
- They have made request in the present appeal proceedings to grant them opportunity to produce necessary documents to justify their refund claim, as they have correctly filed refund application under any other category.

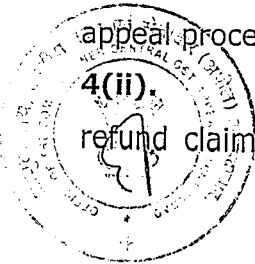
In view of above submissions the appellant has made prayer for sanctioning of refund of Rs.1,49,859/- to them.

3. Personal Hearing in the matter was held on 01.12.2022 wherein Ms. Zeel Choksi, C.A. appeared on behalf of the 'Appellant' as authorized representative. During P.H. they have produced copy of DRC-03 dated 23.03.2023 and stated that they have nothing more to add to their earlier submissions made till date.

Discussion and Findings :

4(i). 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 office of the Commissioner of Central Tax Audit, Ahmedabad has issued a Final Audit Report No. 674/2021-22[CGST]. As per the said audit report "it was observed that in the month of November 2017 the taxpayer has correctly declared an Interstate Supply in GSTR 1 and was liable to pay IGST, however, they discharge tax liability in CGST & SGST in GSTR 3B. On being pointed out the assessee agreed with audit objection and paid tax of Rs.1,49,859/- under head IGST vide DRC-03 dated 23.03.2022". Accordingly, the 'Appellant' had preferred the refund application RFD-01 dated 15.06.2022 for the period November 2017 for refund of Rs.1,49,859/- (CGST 74930 + SGST 74929). The said refund claim is rejected vide *impugned order* and accordingly, *appellant* has challenged the *impugned order* under present appeal proceedings.

4(ii). On going through the *impugned order*, I find that the said refund claim is mainly rejected by *adjudicating authority* on the ground of



non compliance to SCN and refund filed under wrong category. Whereas, the *appellant* in the present appeal proceedings contended that since they have not received Show Cause Notice (Form-GST-RFD-08) they failed to submit document/clarification in time and accordingly, their refund claim is being rejected on the ground on non compliance to SCN. Further, I find that the subject refund claim is also rejected without being heard the *appellant*.

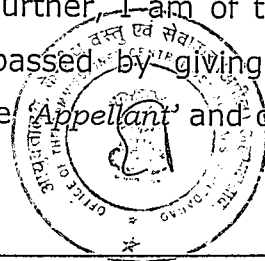
4(iii). Considering the foregoing facts, I find it pertinent to refer Rule 92(3) of the CGST Rules, 2017. The same is reproduced as under :

*(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in **FORM GST RFD-08** to the applicant, requiring him to furnish a reply in **FORM GST RFD-09** within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in **FORM GST RFD-06** sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:*

***Provided** that no application for refund shall be rejected without giving the applicant an opportunity of being heard.*

In view of above legal provisions, if the proper officer is of the view that whole or any part of refund is not admissible to the applicant he shall issue notice to the applicant and after considering the reply of applicant he can issue the order. However, in the present matter the *adjudicating authority* has issued the *impugned order* without the reply of *appellant*. Further, I find that “no application for refund shall be rejected without giving the applicant an opportunity of being heard”. In the present matter, on going through the *Impugned Order*, I find that opportunity of Personal Hearing was provided to the ‘*Appellant*’ on 28.07.22. However, no such findings are available in the *impugned order* or evidence on records that Personal Hearings was conducted. Therefore, I find that the *impugned order* is issued without being heard the ‘*Appellant*’ as well as without the Reply to SCN of *Appellant*.

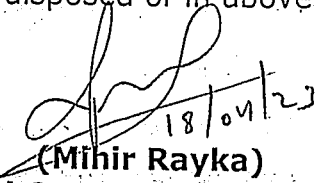
5. In view of above, I find that the *adjudicating authority* has violated the principle of natural justice in passing the *impugned order* vide which rejected the refund claim without the *appellant’s* Reply to SCN and without being heard the *appellant* as well as without communicating the valid or 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. Needless to say, since the claim was rejected on the ground of non compliance to SCN, the admissibility of refund on merit is not examined in this proceeding. Therefore, any claim of refund filed in consequence to this Order may be examined by the appropriate authority for its admissibility on merit in accordance with the provisions of the CGST Act, 2017 and rules made thereunder.

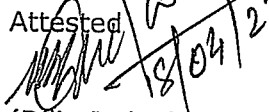
6. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, I allow the appeal of the "*Appellant*" without going into merit of all other aspects, which are required to be complied by the claimant in terms of 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*.

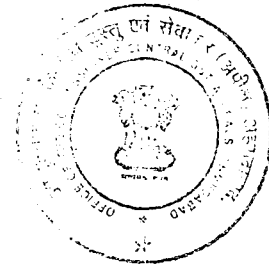
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 18.04.2023

Attested

(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad
By R.P.A.D.



To,
M/s. Sagar Marketing
(Legal Name - Harsh Chander Lakhisarani),
Plot No. 138, Tribhuvan Indu Estate,
Road No. 11, Kathwada GIDC, Kathwada,
Ahmedabad - 382 430

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-V, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

