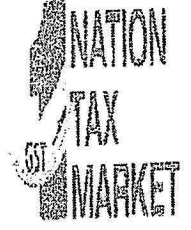




सत्यमेव जयते

आयुक्तकाकार्यालय  
Office of the Commissioner  
केंद्रीय जीएमटी, अपील अहमदावाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएमटी भवन, राजम्व मार्ग, अम्बावाडी अहमदावाद ३८००१५.  
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
Phone: 079-26305065 Fax: 079-26305136  
E-Mail : commrappl1-cexamd@nic.in



**By Regd. Post**

**DIN NO.: 20240164SW0000876359**

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/3480/2023 / <sup>4 US</sup> 73 / 150
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appcal and date	AHM-CGST-001-APP-JC-202/2023-24 and 03.01.2024
(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	05.01.2024
(ङ)	Arising out of Order-In-Original No. ZF2409230308813 dated 25.09.2023 passed by The Assistant Commissioner, CGST Div-II, Ahmedabad South.	
	<b>Name of the Appellant</b>	<b>Name of the Respondent</b>
(च)	M/s Vinayak Construction Equipment Private Limited, 513 Saffron Business Park, Nr Ashirwad Hotel, Jasoda Nagar, Vatva Ahmedabad 382445	The Assistant Commissioner, CGST Div-II, 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(b) 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 <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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



**ORDER-IN-APPEAL****Brief Facts of the Case :**

M/s. Vinayak Construction Equipment Private Limited, 513 Saffron Business Park, Near Ashirwad Hotel, Jasoda Nagar, Vatva, Ahmedabad - 382445 (hereinafter referred as 'Appellant') has filed the present appeal against the Refund Sanction/Rejection order in the form RFD-06 bearing No. ZF2409230308813 dated 25.09.2023 (hereinafter referred as 'impugned order') passed by the Assistant Commissioner, CGST, Division - II, Ahmedabad South (hereinafter referred as 'adjudicating authority').

2. Briefly stated the facts of the case is that the 'Appellant' holding GST Registration - GSTIN No.24AAGCV5362F1ZC, engaged in outward supplies of manufacturing of Batching Mixing Plants and Road Construction and Marking Machinery has filed an application vide ARN: AA240823065548X dated 17.08.2023 under Section 54 of the CGST Act 2017 amounting to Rs. 50,98,410/- for the period from December 2022 to March 2023.

In response to said refund claim a show cause notice No. ZG2409230151080 dated 15.11.2022 was issued to the 'Appellant'. Thereafter, the adjudicating authority has rejected the refund amount Rs. 50,98,410/- vide impugned order dated 25.09.2023 on the following grounds:

- *Physical verification was carded out in respect of the assessee on 28.08.2023 and was found that the said unit was not functioning at the given address and construction work of furniture was being carried out in the said assessee. Upon inquiring from neighborhood and booking office of the said premises it was found that this construction work was being carried out from 2 months and no business activity was being processed from the given address before 2 months. On teteponic conversation with Shri, Viral Prafulbhai Jotapara, Director of the said business and Shri Nilesh H Gajjar, Practitioner of the said taxpayer they have informed us that they have changed their old principal place of business to their new principal place of business mentioned above anti nature of business for one month ago and they have export of goods since January, 2023. In view of the above, it was found that the premises mentioned above with GSTIN: 24AAGCV53621ZC no business activity is being carried out at the premises;*

- The range superintendent vide letter F, No. GEXCOM/AE/VRFN/OTH/60 1/2023-CGST-RANGE- 1-DIV-2- COMM RTE-AHME:DABAD (S) dated 11.09.2023 submitted the reply as under: -

Range Verification report: -

"Physical verification of the premises/PPOB of M/ s Vinayak Construction Equipment Pvt Ltd (Trade Name: Vinayak Construction Equipment Pvt Ltd, (GSTIN: 24AAGCV5362IZC) was conducted by the officers of this range and on reaching the premises it was found closed. We found a name board mentioning the name "Vinayak Construction Equipment Pvt Ltd" on the wall of the address of the premises. There was 9879430770 number on the board which was dialled but was went unanswered. Since the premise was closed, it appeared to be non functioning at the time of visit. "

- During scrutiny of the refund claim the following discrepancies are noticed

1. Required documents related to this claim i.e. shipping bills and related invoices are not attached with the claim.
2. Invoice Number declared in customs EXP/01/22-23 is also not found by customs also.
3. Payment through IGST is more than 90% of the total Liability in GSTR3B .
4. (b) More than 75% of the total exports are done on the payment of IGST. Both queries raised by DGRAM cell.

- Further, it is also notice that M/s. KRISHAN ENGINEERS (GSTIN24ATAPB3814CIZL) has supplied goods to M/s. Vinnyak Construction Equipment Pvt Ltd, GSTIN: 24AAGCV53621ZC). M/s. KRISHAN ENGINEERS (GSTIN-24ATAPB3814CIZL) is identity as a "RISKY EXPOTERS" in DGRAM -33 (15) REPORT. Therefore, As per Para 10 of instruction no 04/2022-GST dated 28.11.2022 issued by Principal Commissioner, CBIC, GST Policy Wing, New Delhi, this office, vide letter F. No. Div-II/REF/MISC/2022-23 dated 14.09.2023 has requested the jurisdictional Assistant Commissioner i.e. Division-V, CGTS, Ahmedabad South to intimate the present status of the case in respect of M/s. KRISHAN ENGINEERS in r/o investigation of DGRAM-33(15). The AC' Div-V, CGST, Ahemdabad South vide F.No . GEXCOM/AE/VRFN/ ARM/ 1747/2023-CGST-UNCIE-I-DIV-VCommrte dated 22.09.2023 has reported that the investigation of M/ s. KRISHAN ENGINEERS (GSTIN- :24ATAPB3814CIZL) is not completed yet.



4. Being aggrieved with the 'impugned order' the appellant has filed the present appeal on 20.10.2023 on the following grounds:

- that the business for which the refund was claimed belongs December 2022 – March 2023. Firstly, it shouldn't have mattered whether the business is working or not. Secondly the business was temporarily closed for 30 days in month of July as there was shifting. We are attaching the amendment sheet to prove our claim. The said is taken from the portal. It can be very well seen that we were shifting our business and thus there was issue and that's the reason the business was standstill for a month;
- That when the officer visited he saw that the furniture work was in progress and decided that the office is closed. That if the office is getting furnished then how can one believe it to be closed and business not in operation. Further, when the officer called the director, very well informed that he is travelling for a fair to foreign land and once he is back will call him. The registration is active even today. Thus, the proposition that the business was closed or inoperative is wrong and without substance and thus needs to be overlooked upon;
- The Total refund application is of Rs 50,98,410/- out of which the total ITC of the said supplier is of Rs 9,00,000/- only. Further, the condition to avail credit nowhere stipulates that if anyone is treated as Risky Exporter then it shall be treated as not admissible. Moreover, he has been treated as risky exporter not been found guilty. No one is guilty until proven. We really fail to understand such stand taken for rejecting the claim. Reliance can be placed on the Hon'ble Gujarat High Court in *M/s Choksi Exports v. Union of India* [R/ Special Civil Application No. 23 '98 of 2022 dated February 03, 2023] has held that, the Revenue Department cannot withheld the refund on the grounds that the assessee had been marked as "risky exporters", when the assessee has not been prosecuted under the Central Goods and Service Tax Act, 2017 ("the CGST Act"). Thus the mere fact that one of the supplier has been treated as Risky Exporter cannot be the ground of rejecting the whole refund;
- the assessee nor his legal representative was told that they have to attend the SCN personally only notice was issued with 4 questions which is attached as Annexure A to this appeal, the assessee within time replied to all the questions raised. The remark by the officer on the verification of AIO that no attachment was found is due to some technical grounds. We had uploaded the documents but due to some



*technical error we couldn't attach the data. In such a case also the documents were available in the returns and the further details could also have been verified from DGFT website. The appellant had mentioned that it is submitting. The data was submitted but don't know why the data couldn't be loaded on the website. We accept the mistake but that cannot be a ground to reject the refund. We are attaching the reply and the documents along with this appeal as Annexure B to this appeal;*

Thus the appellant requests that the refund of the said amount and interest thereon should be paid as soon as possible in eyes of natural law and justice without any further delay.

**Personal Hearing:**

5. Personal Hearing in the matter was held on 13.12.2023 wherein Mr. Monish S. Shah, CA, appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has submitted that they have shifted at new premise and amendment was allowed by department and registration was amended. At new premise furniture work was going on and director was out of country on the day of visit by officer on 28.08.2023. They have informed the same on 29.08.2023 itself. He further reiterated the written submission and 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 Appeals Memorandum. It is observed that the 'Appellant' had preferred the refund application for refund of tax paid on export of services under Section 54 of the CGST Act, 2017 for the period from December 2022 to March 2023 for refund amount of Rs.50,98,410/-. In response to said refund application a Show Cause Notice was issued. Thereafter, the said refund claim was rejected by the *adjudicating authority* vide *impugned order* as required documents related to this claim i.e. shipping bills and related invoices are not attached with the claim; premises was closed and non-functioning; one of the supplier has been treated as Risky Exporter.

7(i). In the instant case, in the impugned order, adjudicating authority stated that no business activity is being carried out at the premises. In this regard the appellant has contended in the present appeal that their business was temporarily closed for 30 days in month of July as there was shifting. Further the appellant stated that during the physical verification of the premises/principal place of business the furniture work



was in progress. Further they stated that at that time the director of the unit is travelling for a fair to foreign land and said information has been communicated to the department.

**7(ii).** Further the adjudicating authority argued that in the instant case, one of the supplier of the appellant is marked as Risky Exporter and the condition to avail credit nowhere stipulates that if anyone is treated as Risky Exporter then it shall be treated as not admissible. In this regard the appellant contended that the their total refund application is of Rs 50,98,410/- out of which the total ITC of the said supplier is of Rs 9,00,000/- only. Moreover, he has been treated as risky exporter not been found guilty. No one is guilty until proven. In this regard the appellant has Reliance on the Hon'ble Gujarat High Court in M/s Choksi Exports v. Union of India [R/Special Civil Application No. 23 '98 of 2022 dated February 03, 2023] has held that, the Revenue Department cannot withheld the refund on the grounds that the assessee had been marked as "risky exporters", when the assessee has not been prosecuted under the Central Goods and Service Tax Act, 2017 ("the CGST Act").



**(iii).** Further it is observed that the assessee replied to all the questions raised in the SCN. They further stated that the remark by the officer on the verification of AIO that no attachment was found is due to some technical grounds as they had uploaded the documents but due to some technical error we couldn't attach the data. The appellant further accepted the mistake and submitted the documents.

**8.** In view of foregoing facts, I find that the refund claim is rejected for the reason that either the *appellant* failed to provide the relevant details/documents or it is not possible for *adjudicating authority* to verify the relevant date. However, it is observed that the *appellant* has submitted in the present appeal that they have provided all the required details with refund application as well as in reply to SCN to the proper officer also. Therefore, it is observed that the refund claim is rejected without proper verification of the documents and details submitted by the appellant at the time of refund application and reply to SCN. In the present matter, on going through impugned order and grounds of appeal, it is observed that the *impugned order* is issued without considering the documents/details submitted by them with refund application as well as with reply to SCN.

9. 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 submission or unavailability of documents/details, 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 Section 54 of the CGST Act, 2017.

10. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside to the extent of rejection of refund claim of Rs. 50,98,410/- 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. The '*Appellant*' is also directed to submit all relevant documents/submission before the *adjudicating authority* for verification of the facts, who shall verify the facts as directed above and pass order accordingly.

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.


  
03/01/2024  
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 03/01/2024



Attested

  
(Sandheer Kumar)  
Superintendent (Appeals)  
Central Tax, Ahmedabad

By R.P.A.D.

To,  
M/s. Vinayak Construction Equipment Private Limited,  
513 Saffron Business Park, Near Ashirwad Hotel,  
Jasoda Nagar, Vatva, Ahmedabad - 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, Ahmedabad South.
5. The Superintendent (System), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File.



