



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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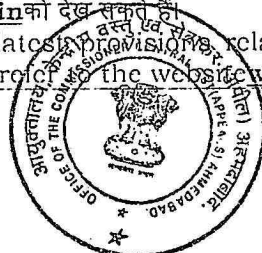


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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2928/2023/187-62
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-001-APP-JC-204/2023-24 and 04.01.2024
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	05.01.2024
(ङ)	Arising out of Order-In-Original No. ZE2405230303742 dated 19.05.2023 passed by The Assistant Commissioner, CGST Div-I Rakhial, Ahmedabad South.	
	Name of the Appellant	Name of the Respondent
(च)	M/s Abhi Traders, (Legal Name – Abhishekbhai Bipinbhai Dave), Shitalvarsha Mahavir Business Park, Plot No. 44/A, Office No. 308, Baheram Pura, Maninagar Narol, Ahmeabad – 380022	The Assistant Commissioner, CGST Div-I Rakhial, 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 अपीलार्थी 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. Abhi Traders, (Legal Name : Abhishekbhai Bipinbhai Dave), Shital Varsha, Mahavir Business Park, Plot No. 44/A, Office No. 308, Baheram Pura, Maninagar Narol, Ahmedabad – 380022 (hereinafter referred as 'Appellant') has filed the present appeal against the Refund Rejection order No. ZE2405230303742 dated 19.05.2023 (hereinafter referred as impugned order) passed by the Assistant Commissioner, CGST, Division –I-Rakhial, Ahmedabad South (hereinafter referred as 'adjudicating authority').

2. Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No.24GAKPD5328C2Z0, has filed refund application of refund in RFD-01 vide ARN No. AA2403230200351 dated 06.03.2023 amounting to Rs. 34,72,288/-. During the verification of refund claim a SCN No. ZI2404230150507 dated 12.04.2023 was issued on the following grounds:

a. *No documentary evidence was attached with respect to refund claim in r/ o Shipping Bill No 6374294 dated 23.12.2022 and 6637766 dated 02.01.2023.*

The claimant was requested to provide copies of Export GST Invoices, e-way bill, Lorry receipt, Customs invoices, Shipping Bills, Bill of lading, Purchase Invoices, e-way bill and Lorry receipt for the same, Trading account, Profit & Loss account and Bala.nee Sheet for F. Y. 2022-23 and Income Tax Return, Bank Statement.

c. *Proof the receipt of payment realization of exported goods like BRC/FIRC which is mandatory in accordance with Foreign Exchange Management Act, 1994 read with section 16 of IGST Act. 2017 and rule 96B of the CGST Rules, 2017 within 6 months from shipment of exported goods proceeding of sale should be realized.*

3. The impugned Show Cause Notice has been adjudicated by the adjudicating authority vide the impugned order dated 19.05.2023. The adjudicating authority has passed the impugned order, which is briefly summarized as below:

"The claimant neither replied to the SCN nor appeared for the PH. Further, when the refund claim application appeared in the task menu of the undersigned, the claimant was asked to submit the reply again. In this regard, they have submitted to sanction the refund and that they also did not want any interest for the delay. In this regard, I find that

the claimant has not submitted any documents as specified in the SCN for verification. Hence, it is not possible to verify the claim properly and the refund is therefore liable for rejection”.

4. Being aggrieved with the ‘impugned order’ the appellant have filed the present appeals on 10.07.2023 on the following grounds:

- The Lrd. Assistant Commissioner, COST, Division-I (Rakhial), Ahmedabad - South has grievously erred in law in rejecting the refund application of Rs. 3472288/- and issued RFD-06 on AIO. The action and order of the assessing authority deserves to be quashed and set aside and appeal may please be allowed;
- Pursuant to the application of refund appellant had attended the office of the jurisdictional officer and submitted voluminous documents physically on 11/04/2023, moreover all these documents were also uploaded by the appellant along with refund application. Thereafter series of communication and submissions were made by the appellant in the office of assessing officer time to time with special reference to letter dated 23/10/2023, 11/04/2023, 04/05/2023, 17/05/2023, therefore, this is not the case where appellant has not submitted required documents and evidences or remained non-compliant.;
- The Lrd. Assessing Authority has without verifying the documents and evidences rejected the refund application on 19/05/2023 of the appellant on the ground of non-submission of documents. The order passed by the Lrd. Assessing Authority is contrary to the facts and merits of the case. Moreover, no proper opportunity of being heard was also given to the appellant i.e. gross violation of principle of natural justice, constitutional and fundamental rights of the taxpayer and contrary to the provisions of GST Act;
- The Lrd. Assessing Authority has rejected the refund application on the ground of non-submission of documentary evidence, export proof and proof of receipt of payment of realization. All these documents were submitted by the appellant online and offline i.e. with the refund application and thereafter in compliance of various notices including show cause notice received from the assessing authority, therefore, the entire action of the assessing authority is unwarranted, unjustifiable and unlawful;
- The Lrd. Assessing Authority has grievously erred in law in stating that appellant has not submitted proof of receipt of payment realization of



export of goods whereas appellant has submitted the related documents as a proof of realization of export payment.;

- *The Lrd. Assessing Authority has erred in law while rejecting the refund application without providing proper opportunity of being heard to the appellant. The action is in gross violation of principle of natural justice. Moreover, the Assessing Authority has also not passed speaking order;*

Personal Hearing:

5. Personal Hearing in the matter was fixed on 26.10.2023, 09.11.2023, 21.11.2023, 30.11.2023 and 14.12.2023. However, no one appeared for the Personal Hearing on the Scheduled dates and also not received any communication from appellant in this regard.

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. It is observed that the appellant has been given the sufficient number of Personal Hearing, before deciding the matter by this appellate authority. However, no one responded to the PH letters. Therefore, there is no other option to decide the matter except decide the same as ex-parte.

In the instant case it is observed that the 'Appellant' had filed refund application of refund in RFD-01 vide ARN No. AA2403230200351 dated 06.03.2023 amounting to Rs. 34,72,288/-. In response to said refund application a Show Cause Notice was issued to them on 12.04.2023 and proposing rejection of refund claim. Thereafter, the said refund claim was rejected by the adjudicating authority vide impugned order with Remark as – *"The claimant neither replied to the SCN nor appeared for the PH. Further, when the refund claim application appeared in the task menu of the undersigned, the claimant was asked to submit the reply again. In this regard, they have submitted to sanction the refund and that they also did not want any interest for the delay. In this regard, I find that the claimant has not submitted any documents as specified in the SCN for verification. Hence, it is not possible to verify the claim properly and the refund is therefore liable for rejection.*

7(i). Further, it is observed that the appellant has contended in the present appeal that they have provided all the required documents and uploaded the same while filing application for GST refund. However, it is observed that the adjudicating authority has rejected the amount of refund on the sole ground that the queries raised in the SCN have not been replied



by the appellant and has not submitted any documents as specified in the SCN for verification.

7(ii). Accordingly, I find it pertinent to refer the relevant provisions, the same is as under:

Section 54. Refund of tax:

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

(4) The application shall be accompanied by-

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-

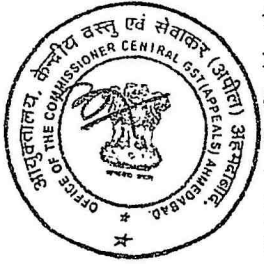
(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in FORM GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-

(a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in sub-section (6) of section 107 and sub-section (8) of section 112 claimed as refund;

(b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods, 11[other than electricity];

11[(ba) a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity;]

(c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;



(d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

(e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

2[(f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;]

(g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

(h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;

(i) a statement containing the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;

(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

(k) a statement showing the details of the amount of claim on account of excess payment of tax;

17[(ka) a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

(kb) a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;]



(l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

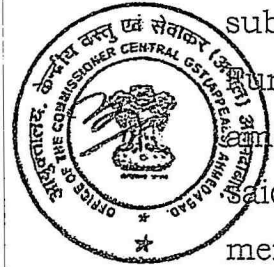
Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

(m) a Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

In view of above provisions and while filing refund application certain documents are required to file by the appellant for the eligibility/genuineness of the refund claim.

8(i). It is observed that the refund claim is rejected for the reason that the appellant failed to provide the relevant details/documents. However, while going through the appeal memorandum filed by the appellant it is observed that the appellant has submitted all the required documents while filing application for GST refund and also uploaded the same and also submitted documents as raised through SCN, while filing Form GST APL-01. Further, it is observed that the adjudicating authority has rejected the amount of refund on the ground that the appellant had not filed reply to the said SCN. In this connection, the appellant during the filing of appeal memorandum stated that they have submitted voluminous documents physically on 11/04/2023, moreover all these documents were also uploaded by the along with refund application. Thereafter series of communication and submissions were made in the office of assessing officer time to time with special reference to letter dated 23/10/2023, 11/04/2023, 04/05/2023, 17/05/2023.

8(ii). Further, during the appeal the appellant have stated that have submitted the related documents as a proof of realization of export payment. They also contended that, no proper opportunity of being heard was also given to the appellant that violates the principle of natural justice, constitutional and fundamental rights of the taxpayer and contrary to the provisions of GST Act.



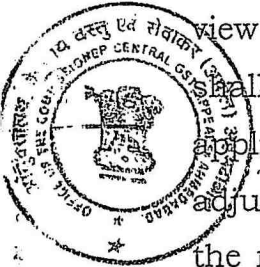
9. Considering the foregoing facts, I find it pertinent to refer the Rule 92(3) of the CGST Rules, 2017, same is reproduced as under:

(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 considering the reply of appellant. Further, "no application for refund shall be rejected without giving the applicant an opportunity of being heard". In the present matter, on going through the copy of impugned order and grounds of appeal, it is observed that the appellant has submitted all the documents before assessing officer.

10. In view of above, it is observed that the adjudicating authority has not followed the principle of natural justice in passing the impugned order vide which rejected the refund claim without considering the appellant reply, documents/details as well as without communicating the valid or legitimate reasons before passing said order. Further, that proper speaking order should have been passed by giving proper opportunity to the appellant to produce required documents/details 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

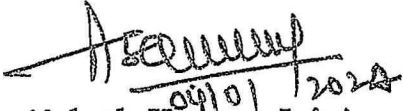


the claim was rejected on the ground of non submission or unavailability of documents/details, the admissibility of refund on merit is not examined in this proceeding. Therefore, any claim of refund filed in consequence to this Order may be examined by the appropriate authority for its admissibility on merit in accordance with the provisions of Section 54 of the CGST Act, 2017.


11. In view of above discussions, the impugned order passed by the adjudicating authority is set aside for being not legal and proper to the extent of rejection of refund claim of Rs. 34,72,288/-. 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 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.


 (Adesh Kumar Jain)
 Joint Commissioner (Appeals)
 Date: 04.01.2024

Attested


 (Sandheer Kumar)
 Superintendent (Appeals)

By R.P.A.D.

To,
 M/s. Abhi Traders,
 (Legal Name : Abhishekbhai Bipinbhai Dave),
 Shital Varsha, Mahavir Business Park,
 Plot No. 44/A, Office No. 308,
 Baheram Pura, Maninagar Narol,
 Ahmedabad - 380022.



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 - I- Rakhial, Ahmedabad South.
5. The Superintendent (System), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File.

