



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/15/2023 -APPEAL / 1818-73
ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-21/2023-24**
दिनांक Date : **30-05-2023** जारी करने की तारीख Date of Issue : **30-05-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

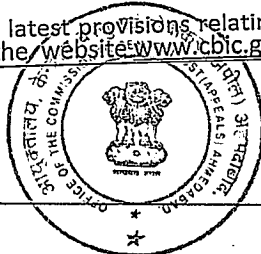
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZM2409220131901 DT. 09.09.2022**

issued by The Assistant Commissioner, CGST, Division-I, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**M/s. Ankur Vadilal Shah, Ground Floor, 81/B-Block, Sumel Business Park-2,
Near Vanijya Bhavan Kankariya, Ahmedabad-380022**

| | |
|-------|---|
| (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 . |



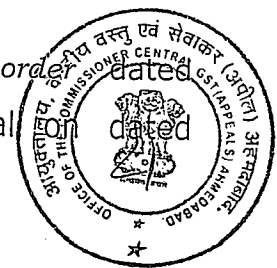
ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Ankur Vadilal Shah, 81/B - Block, Ground Floor, Sumel Business Park - 2, Near Vanijya Bhavan, Kankariya, Ahmedabad - 380 022 (hereinafter referred as '**Appellant**') has filed the present appeal against the Order in form RFD-06 bearing No. ZM2409220131901 dated 09.09.2022 (hereinafter referred as '**impugned order**') passed by the Assistant Commissioner, CGST, Division - I (Rakhial), Ahmedabad South (hereinafter referred as '**adjudicating authority**').

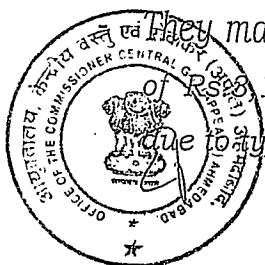
2(i). Briefly stated the facts of the case is that the '**Appellant**' is holding GST Registration - GSTIN No.24ACUPS2054A1ZP had filed the refund application under category "*Refund on account of ITC accumulated due to Inverted Tax Structure*" on dated 13.08.2022 for Rs.2,74,834/-. In response to said refund application a Show Cause Notice dated 01.09.2022 was issued to the '**Appellant**'. It was proposed that refund application is liable to be rejected for the reasons "*Other*" with Remark as "*1. Diff. in inverted Turnover and Tax paid on thereof. 2. More ITC claimed in Annexure-B in comparison to Statement 1. Hence, claim is liable for rejection*". Thereafter, the said refund application is rejected by the '**adjudicating authority**' vide '**impugned order**' on the following grounds -

- *The reply submitted by the claimant in respect of queries raise in the SCN is not satisfactory. From the Data/Details taken from GSTR-1, GSTR-3B and Statement-1 (uploaded with RFD-01) of the Inverted Turnover, Tax paid on inverted turnover, Adjusted Turnover and Net ITC it is seen that inverted turnover is more than the adjusted total turnover which is not practically possible.*
- *For the Net ITC claimant's reply that they had also included the ITC in Annexure-B which was not reflecting in GSTR-2A is not acceptable because the provisions of refund clearly restricts claiming of the ITC of those invoices which do not reflect in GSTR-2A.*
- *Considering the above facts, the refund claim is inadmissible.*

2(ii). Being aggrieved with the *impugned order* dated 09.09.2022 the '**Appellant**' has filed the present appeal dated 07.12.2022 on the following grounds :



- In response to SCN they had submitted their reply under Form GST-RFD-09 dated 01.09.22 and it was stated that if contrary view is taken, opportunity of being heard may be granted.
- They have calculated and produced details that as per RFD-01 they shown Inverted Turnover as Rs.4,18,69,941/- and as per GSTR-1 the correct Inverted Turnover is Rs.4,21,85,993/-. The difference of taxable value of Rs.3,16,052/- and tax thereon Rs.15,802/- is due to B2CS not coming in total because of typographical error.
- As regards to more ITC claimed in Annexure B in comparison to Statement-1 they would like to inform that they have bifurcated all ITCs into Inputs, Input Services and Capital Goods while preparing Annexure-B. In manual & online statement-1, they have only shown those invoices which are shown in GSTR-2A. Due to this practice for filing refund application, found more ITCs claimed in Annexure - B in comparison to Statement-1.
- The adjudicating authority has passed rejection order without considering above facts and submission given in reply to SCN.
- They have filed refund application for refund of Rs.2,74,834/- of accumulated ITC due to Inverted Tax Structure, by calculating Net ITC consisting only of Inputs amounting to Rs.20,54,011/- as defined in Act.
- Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.
- While calculating Net ITC for refund application, they considered only those input invoices which were uploaded by supplier in the Form of GSTR-01 and were reflected in GSTR-2A of the appellant i.e. they have complied para 5.2 of Circular No. 135/05/2020 dated 31.03.2020. They have also followed Notification No. 14/2022-Central Tax dated 05.07.2022 and Circular No. 181/13/2022-GST dated 10.11.2022.
- In reply to SCN they replied for query of difference in Inverted Turnover shown in GSTR-1 and RFD-01 amounting to Rs.12,564/- that in the month of July'21, they have not considered one sale bill of Rs.11964/- party name Ankur Creation vide Invoice No. GS000306/2122 dated 24.06.21 while filing GSTR-1 of June'21 and tax thereon paid in GSTR-3B of June'21. The same has been shown in GSTR-1 of July'21. In Sept.'21 they amended one sale bill i/r. Krushna Collection.
- They made mistake in inverted turnover by not considered B2Cs sales of Rs.3,16,052/- and IGST thereon Rs.15,803/- during refund period due to typographical error.

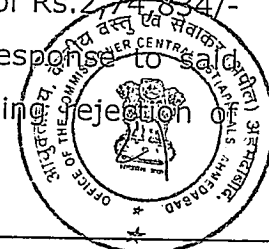


- The Adjudicating Authority passed impugned order by not considering above facts and submission given in reply to SCN i.e. they had claimed refund on Inputs only as reflected in Net ITC and New Method issued by GST department w.e.f. 05.07.2022 for calculating Refund in case of Inverted turnover.
- The action of rejection of refund claim and not considering the facts of the case also devoid, the appellant of right of natural justice. The adjudicating authority has failed to appreciate the above aspects and has arbitrarily rejected the refund application which is grossly illegal and bad in law.
- The impugned order rejecting the entire refund claim is harsh as it without considering the facts of the case and providing sufficient second opportunity of being heard to a bona-fide taxpayer who has made a minor mistake, thereby defeating the principle of intelligible differentia. The rejection of refund vide impugned order is not sustainable and liable to be set aside in the interest of justice.
- It is well settled law by the various authorities and Courts that substantive benefit could not be denied for procedural mistakes in the present case, is an inadvertent and procedural mistake.
- The impugned order has been passed on the basis of assumptions, presumptions, conjectures and surmises and without proper consideration of facts, records, opportunity of being heard and submissions therein, and is therefore, liable to be set aside, to the extent the impugned order is against the Appellant.
- The rejection of refund claim without providing sufficient opportunity of being heard is illegal, unjustified, bad in law and hence needs to be summarily quashed to meet the ends of justice.

3. Personal Hearing in the matter was held on 25.04.2023 wherein Mr. Maulik Parekh, C.A. appeared on behalf of the 'Appellant' as authorized representative. During P.H. they have stated that they have nothing more to add to their written submissions 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 'Appellant' had filed the refund application RFD-01 for the period July'21 to September'21 for refund of Rs.2,74,834/- of accumulated ITC due to Inverted Tax Structure. In response to said refund application a SCN was issued to appellant proposing rejection of



refund mainly on the ground of difference in Inverted Turnover and more ITC claimed in Annexure-B in comparison to Statement 1. The appellant had furnished the reply to SCN wherein explained the reasons for difference in Inverted Turnover as well as Net ITC to be considered for refund. However, the adjudicating authority has rejected the entire refund claim for the reasons that the reply to SCN furnished by appellant is not satisfactory.

4(ii). On going through the *impugned order*, I find that the said refund claim is mainly rejected by *adjudicating authority* on the ground that as per details of GSTR-1, GSTR-3B and Statement-1 (uploaded with RFD-01) of the Inverted Turnover, Tax paid on inverted turnover, Adjusted Turnover and Net ITC ; the inverted turnover is more than the adjusted total turnover. Moreover, as regards to Net ITC issue, the adjudicating authority has held that the provisions of refund clearly restrict claiming of the ITC of those invoices which do not reflect in GSTR-2A. Whereas, the *appellant* in the present appeal proceedings contended that the difference in Inverted Turnover was due to the reason that they have not considered one sale bill of Rs.11,964/- of June'21 while filing GSTR-1 of June'21 and tax thereon paid in GSTR-3B of June'21 and the same was shown in GSTR-1 of July'21 ; that further, in Sept.'21 they had amended one sale bill also. The appellant has further contended that by mistake they have not considered B2Cs sales of Rs.3,16,052/- and IGST thereon Rs.15,803/- during refund period due to typographical error. As regards to issue of more ITC claimed the appellant has contended in the present appeal proceedings that they considered only those input invoices which were uploaded by supplier in the Form of GSTR-01 and were reflected in GSTR-2A of the appellant. Further, appellant has contended that they have complied relevant Circular and Notification.

4(iii). Further, the appellant has contended that the Adjudicating Authority has passed the impugned order by not considering above facts and submission provided by them in reply to SCN ; that rejected the entire refund claim without considering the facts of the case and without providing sufficient opportunity of being heard. 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

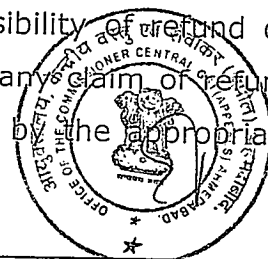


claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in **FORM GST RFD-08** to the applicant, requiring him to furnish a reply in **FORM GST RFD-09** within a period of fifteen days of the receipt of such notice and after considering the reply, make an order 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* by considering reply of appellant as not satisfactory. 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 02.09.22 but appellant could not attend the PH. It is pertinent to mention here that the SCN was issued on 01.09.2022 and it was directed to appellant to appear for Personal Hearing on very next day i.e. on 02.09.2022. Therefore, I find that the *impugned order* is issued without providing the sufficient opportunity of being heard to the 'Appellant'.

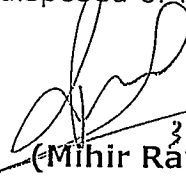
5. In view of above, I find that the *adjudicating authority* has violated the principle of natural justice in passing the *impugned order* vide which rejected the refund claim without considering appellant's Reply to SCN and without being heard the appellant as well as without communicating the valid 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 satisfactory reply to SCN, the admissibility of refund on merit is not examined in this proceeding. Therefore, any claim or 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*.

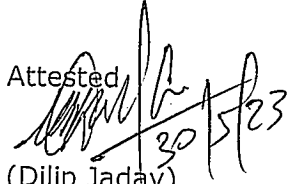
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

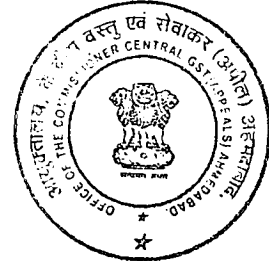

30/05/23
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 30.05.2023

Attested


30/05/23
(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad
By R.P.A.D.



To,
M/s. Ankur Vadilal Shah,
81/B - Block, Ground Floor, Sumel Business Park - 2,
Near Vanijya Bhavan, Kankariya, Ahmedabad - 380 022

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

