



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- 202403645W0000222B7B

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/678/2024-APPEAL/3838-uu

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 237 /2023-24

दिनांक Date :18.03.2024 जारी करने की तारीख Date of Issue : 21.03.2024

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. ZF2408230309656 dated 22.08.2023 issued by The Assistant Commissioner, CGST Div-VII, Ahmedabad South Commissionerate.

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

Appellant	Respondent
M/s Ferro India Private Limited, First Floor, Unit No. 104, A Block, Mondeal Heights, SG Highway, Ahmedabad, Gujarat - 380 015	The Assistant Commissioner, CGST Div-VII, Ahmedabad South Commissionerate

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)

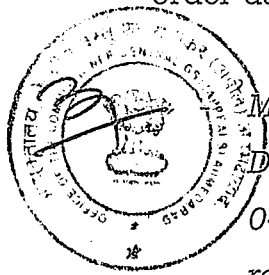
उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbic.gov.in](http://www.cbic.gov.in) को देख सकते हैं।

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](http://www.cbic.gov.in).

ORDER-IN-APPEALBrief Facts of the Case :

M/s. Ferro India Private Limited, First Floor, Unit No. 104, A Block, Mondeal Heights, SG Highway, Ahmedabad, Gujarat-380015 (hereinafter referred as 'Appellant') has filed the present appeal against the Refund Sanction/Rejection Order in the form RFD-06 bearing No. ZF2408230309656 dated 22.08.2023 (hereinafter referred as 'impugned order') passed by the Assistant Commissioner, CGST, Division - VII, 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.24AABCF8485G1ZH had filed the refund application on account of "Any other" (GST paid on export of goods) for the month of January 202, vide ARN No. AA240523167353D dated 28.05.2023 for Rs.11,81,110/-. A Show Cause Notice No. ZH2407230395533 issue on 28.07.2023. Brief facts of the SCN are that "Accordingly to report received from Range superintendent verification could not be done because of non existence of the firm". Being risky exporter, refund of appellant is transmitted by system to the Division-VII, Ahmedabad South for refund of IGST paid on export of goods (Refund not processed by ICEGATE) under Form-GST-RFD-01. The adjudicating authority further rejected the refund application vide impugned order dated 22.08.2023 on the following grounds:



M/s. Ferro India Private Limited was marked as Risky Exporter as per DGARM Report No. 21AL. Further, CBIC, New Delhi issued Instructions No. 04/2022- GST dated 28. 11.2022 wherein it is mentioned that all IGST refunds withheld due to DGARM risky exporter alerts would be transmitted to jurisdictional GST officer;

- In view of the above instruction and being a risky exporter, refund of the appellant is transmitted by system to the Division-VII, Ahmedabad South;
- that Superintendent, AR-III, Division-VII vide letter F.No WS0701/IGSTREFUND/Ferro/23-24 dated 27.07.2023 has submitted verification report of DGARM Report No. 21 AL in respect of said claimant wherein recommendation about the bonafides of the entity has not been verified inter alia stating that said claimant does not exists at the Principal Place of Business. Accordingly to report received from Range superintendent it was found that neither the taxpayer nor any person on the behalf of tax payer was available on said address. In view of the above, it appears that the said taxpayer is not in existence at the said address.

3. Being aggrieved with the impugned order dated 22.08.2023 the 'Appellant' has filed the present appeal on dated 02.01.2024 on the following grounds :

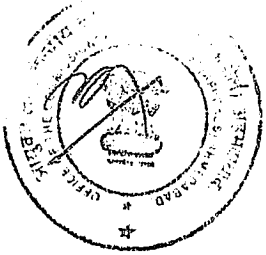
- The Appellant hereby submits that the observations of the Ld. Adjudicating Authority by virtue of the Order dated 22 August 2023 are not tenable;
- That the Principles of Natural Justice have been grossly violated by Ld. Adjudicating Authorities while issuing the Order in the impugned matter, accordingly the Order dated 22 August 2023 deserves to be quashed;
- Personal hearing in the matter was fixed by the adjudicating authority on 31.07.2023. The appellant has sought for extension of PH till 31.08.2023. Accordingly, the date of personal hearing was extended from 31.07.2023 to 21.08.2023;
- that, the Appellant has sought an extension for both Personal Hearing and response to be furnished against SCN till 31 August 2023. However, the Ld. Adjudicating Authority was in haste to conclude the matter that they failed to record the said matter while issuing speaking order;
- That the Adjudicating Authority has extended the personal hearing and scheduled it on 21 August 2023, and the order was issued on 22 August 2023, without even waiting for the response of the Appellant;

the Ld. Adjudicating Authority has directly passed impugned order on 22 August 2023 without providing any opportunity to Appellant to represent their case. Thus, contention of the Ld. Adjudicating Authority that the personal hearing was scheduled on 21 August 2023 is baseless and cannot be treated as valid hearing and there was no communication for the said PH;

- The Appellant submits that the principles of natural justice, encompasses within itself, three basic fundamental principles to be mandatorily followed in any proceedings to prevent gross miscarriage of justice –

(i). Nobody should be a judge in his own cause or in a cause in which he is interested. This principle is laid down in the legal maxim *Memo debet esse judex in propria causa* and is more popularly known as Doctrine of Bias.

(ii). The second principle of natural justice literally means to hear the other side-. This is necessary for providing a fair hearing and no doubt the rule against bias would also be a part of the procedure. This lies within the latin phrase "*audi alteram partem*"



(iii). The third aspect of natural justice requires speaking orders or reasoned decisions. It is now universally recognized that giving reasons for a certain decision is one of the fundamentals of good administration and a safeguard against arbitrariness;

- Reliance on some of the case laws is placed as under –
- Hon'ble Supreme Court's in the case of *M/s. Daffodills Pharmaceuticals Ltd. & Anc v. State of U.P, & Ann (Civil Appeal No. 9417 of 2019)* held that "no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move".
- Hon'ble Kerala High Court in the matter of *Heveacrum Rubber (P) Ltd. Vs. Superintendent of Central Excise*, reported in 1983 (14) E.L.T. 1685 (Ker.).
- Further, the reference is also drawn upon rule 92(3) of GST Rules, which provides proper officer shall provide opportunity of being heard to the registered person before passing any adverse order.
- That the Appellant was in due existence during the impugned period and accordingly the refund must be sanctioned as the Appellant is in receipt of necessary documents required for sanctioning of refunds;
- the Appellant submits that the report issued by the range superintendent is incorrect and baseless. During the impugned period, the Appellant was very much in existence and in order to substantiate the fact the Appellant has the copies of rental Agreement and invoice copies received from landlord against rent paid during the impugned period;
- the Appellant was operational only till March 2021. Due to accumulation of huge losses, the Appellant had to shut its operations. Thereafter, the Appellant have been filing only "Nil return" in order to comply with the provision of law and also for the purpose of receiving refund of tax paid on other export supplies;
- that the Appellant has closed its business since March 2021 shall not be in existence as on date. However, the Nonexistence of Appellant during the current date does not have any impact on the supplies made during Feb 2021. As the Appellant was very much in existence at the time of making export supplies and has duly complied with all the provisions of GST Act and rightly eligible for the refund of IGST paid on such export supplies;
- that the Appellant has withheld the GST registration only for the purpose the making amendments to the export supplies declared by them. During the impugned period, the Appellant has also few other export supplies. However, at the time of filing GSTR-1, the Appellant has inadvertently declared incorrect invoice details due to which the refund was withheld by



- customs. The Appellant is required to amend the details of export supplies in their GSTR-I as prescribed in rule 96 of GST Rules;*
- *the exporter of goods is required to rectify the mismatch between GSTR-1 and shipping bill. Only after such rectification, the refund application shall be processed. Accordingly, the Appellant has withheld the GST registration to make appropriate amendments and receive the refunds of IGST;*
  - *as per Instruction No. 04/2022 dated 28.11.2022, that the proper officer shall verify the genuineness of the exporter & verify the correctness of claims for the relevant period for which the refund application has been filed. However, the Jurisdictional officer has merely passed a negative report without even considering the fact that the Appellant was in existence at the time of making exports supplies;*
  - *Therefore, impugned Order dated 22 August 2023 which was passed on the basis of negative report issued by range officer needs to be quashed as the Appellant is rightfully eligible to claim the impugned refund*

**Personal Hearing:**

4. Personal Hearing in the matter was fixed/held on 21.02.2024 and 05.03.2024 wherein Shri Ramani Nvs, C.A. and Shir Amit K. Jain, C.A., appeared on behalf of the 'Appellant' as authorized representatives. During P.H. they stated that the firm was in existence at the relevant point of time but due to covid they have closed the business therefore no person was available and audit was also conducted. Registration is kept alive to complete the formalities under GST laws. No business since April 2021. No personal hearing has been granted so order has been passed in violation of natural justice. They further reiterated the written submission and requested to allow appeal.

**Discussion and Findings :**

5. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. In the instant case the 'Appellant' had preferred the refund application for refund of Rs.11,81,110/- on account of "Any other (GST paid on export of goods) for the month of January 2021 vide ARN No. AA240523167353D dated 28.05.2023.

6(i). M/s. Ferro India Private Limited was marked as Risky Exporter as per DGARM Report No. 21AL. Further, CBIC, New Delhi issued Instructions No. 04/2022- GST dated 28.11.2022 wherein it is mentioned that all IGST refunds withheld due to DGARM risky exporter alerts would be transmitted to jurisdictional GST officer. Relevant portion of said instruction is reproduced below: -

"4. DGARM on the basis of data analysis and risk parameters, would identify the exporters where verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund. DGARM would then place an all India alert on such exporter on Indian Customs EDI system along with the reasons for putting the said alert. Once an alert is placed on an exporter, the IGST refunds of such exporters would be withheld and the data in respect of Shipping Bills filed by such exporter, for which IGST Scroll could not be generated due to DGARM alert, along with the reasons thereof would be transmitted to GSTN through ICEGATE for generation of refund claims in FORM GSF RFD-001 in terms of provisions of sub-rule (5A) of rule 96. Besides, the past cases where the exporter was identified as risky, which could not be processed due to pending verification or due to receipt of negative report, would also be transmitted to GSTN through ICEGATE for generation of refund claims in Form GST RFD-01 in terms of provisions of sub-rule (5A) of rule 96.

"5 Such refund claims will be made available to the jurisdictional proper officer on the back-office system under the category "Any other (GST paid on export of goods)' with the remarks "Refund of IGST paid on export of goods (Refund not processed by ICEGATE)". Further, the risk parameters, on basis of which the exporter has been identified as risky by DGARM, would be shared with the jurisdictional tax officers along with the system-generated refund claim in FORM GST RFD-01. In cases where the verification report in respect of the exporter has already been submitted to DRARM by the jurisdictional CGST authorities, the details of the same would also be shared with the jurisdictional proper officer, along with the said system generated refund claim in FORM GST RFD-01. Transmission of such IGST refunds to the jurisdictional proper officers, withheld on account of the identification of exporter as risky by DGARM, is being initiated on the portal."

**6(ii).** In view of the above instruction and being a risky exporter, refund of the appellant is transmitted by system to the Division-VII, Ahmedabad South in terms of Instructions No. 04/2022-GST dated 28.11.2022 vide ARN No. AA240523167353D dated 28.05.2023. Further the Superintendent, AR-III, Division-VII vide letter F.No WS0701/IGSTREFUND/Ferro/23-24 dated 27.07.2023 has submitted verification report of DGARM Report No. 21 AL in respect of said claimant wherein recommendation about the bonafides of the entity has not been verified inter alia stating that said claimant does not exist at the Principal Place of Business. Accordingly to report received from Range superintendent it was found that "neither the taxpayer nor any person on the behalf of tax payer was available on said address. In view of the above, it appears that the said taxpayer is not in existence at the said address".

7. In view of the above the appellant in the appeal memo contended that the report issued by the range superintendent is incorrect and baseless. During the impugned period, they was very much in existence and in order to substantiate the fact the they have the copies of rental Agreement and invoice copies received from landlord against rent paid during the impugned period. They further submitted that the unit was operational till March 2021. Due to accumulation of huge losses, the Appellant had to shut its operations. During P.H. they stated that the firm was in existence at the relevant point of time but due to covid they have closed the business therefore no person was available Thereafter, they have been filing only "Nil return" in order to comply with the provision of law and also for the purpose of receiving refund of tax paid on other export supplies. They further stated that the nonexistence of Appellant during the current date does not have any impact on the supplies made during Feb 2021. As the Appellant was very much in existence at the time of making export supplies and has duly complied with all the provisions of GST Act and rightly eligible for the refund of IGST paid on such export supplies.

8(i). Further, it is observed that the *appellant* is mainly contending that the refund is rejected without being heard them and thus violated the principle of natural justice. The appellant has also referred Rule 92(3) of the CGST Rules, 2017 in this regard and also referred the related case laws in connection with violation of principle of natural justice. Considering the foregoing facts, I find that in the present matter the refund claim is rejected without being heard the appellant accordingly, I have referred 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, I find

that "no application for refund shall be rejected without giving the applicant an opportunity of being heard". In the present matter, the appellant is contended that their refund claim is decided without giving them any opportunity of personal hearing.

**8(ii).** In the instant case, it is observed that the adjudicating authority had given personal hearing in the matter on 31.07.2023. The appellant has sought for extension of PH till 31.08.2023. Accordingly, the date of personal hearing was extended from 31.07.2023 to 21.08.2023. Further it is observed that the Appellant has sought an extension for both Personal Hearing and response to be furnished against SCN till 31 August 2023. However, the Adjudicating Authority has extended the personal hearing and scheduled it on 21 August 2023, and the order was issued on 22 August 2023, without even waiting for the response of the Appellant. In view of the above it is observed that the Adjudicating Authority has directly passed impugned order on 22.08.2023, .i.e. next date of second personal hearing which was held on 21.08.2023, without providing any opportunity to Appellant to represent their case. The appellant in his appeal memo contended that that the personal hearing, scheduled on 21.08.2023 is baseless and cannot be treated as valid hearing as there was no communication for the said PH.

**8(iii).** It is observed that the appellant has relied upon certain case laws, in respect of order passed against the violation of principles of natural justice, as mentioned below –

- Hon'ble Supreme Court's in the case of *M/s. Daffodills Pharmaceuticals Ltd. & Anc v. State of U.P, & Ann (Civil Appeal No. 9417 of 2019)* held that "no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move".
- Hon'ble Kerala High Court in the matter of *Heveacrumb Rubber (P) Ltd. Vs. Superintendent of Central Excise, reported in 1983 (14) E.L.T. 1685 (Ker.)*.

**8(iv.)** At this stage it would be germane to refer to observations made by the Gujarat High Court in the case of *Aggrawal Dyeing & Printing Works 2022(66) G.S.T.L. 348* and of *Jain Enterprise v. State of Gujarat: (2024) 15 Centax 293 (Guj)*, at para 14 as mentioned below:

14. We further notice that the respondent authority has failed to extend sufficient opportunity of hearing before passing impugned order, inspite of specific request for adjournment sought for. Even the impugned order is not only non speaking, but cryptic in nature and the reason of cancellation not decipherable there from. Thus, on all counts the respondent authority has failed to adhered to the aforesaid legal position. We therefore, have no

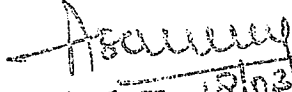


hesitation in holding that the basic Principles of natural justice stand violated and the order needs to be quashed as it entails penal and pecuniary consequences.

9. 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 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. Therefore, the *adjudicating authority* is directed to process the refund application of the *appellant* following the principle of natural justice as per directions of Hon'ble High Court of Gujarat in case of Aggrawal Dyeing & Printing Works 2022(66) G.S.T.L. 348 and of Jain Enterprise v. State of Gujarat: (2024) 15 Centax 293 (Guj).

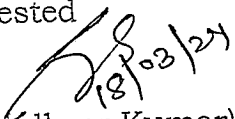
10. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, I allow the appeal of the "*Appellant*" without going into merit of all other aspects.

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: 18.03.2024

Attested

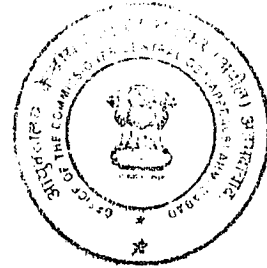
  
(Sandheer Kumar)  
Superintendent (Appeals)  
Central Tax, Ahmedabad

By R.P.A.D.

To,  
M/s. Ferro India Private Limited,  
First Floor, Unit No. 104, A Block,  
Mondeal Heights, SG Highway,  
Ahmedabad, Gujarat-380015.

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 (RRA), CGST, Ahmedabad South.
5. The Dy./Asstt. Commissioner, CGST, Division-VI, Ahmedabad South.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File. / P.A. File.



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