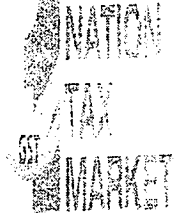




सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
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E-Mail : commrappl1-cexamd@nic.in



By Regd. Post

DIN NO.: 20240464SW0000823648

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/670/2024/2810-15
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-001-APP-JC-252/2023-24 and 28.03.2024
(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	03.04.2024
(ङ)	Arising out of Order-In-Original No. ZM2408230341856 dated 23.08.2023 passed by the Assistant commissioner, CGST, Division-VII, Ahmedabad South.	
	Name of the Appellant	Name of the Respondent
(च)	M/s. Jindal World wide Limited, Jindal Corporate House, opp. D-Mart, I.O.C. Petrol Pump Lane, Shivranjani, Shyamal, 132 Ft Ring Road, Satellite, Ahmedabad-380015	The Assistant commissioner, CGST, Division-VII, Ahmedabad South



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.

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.

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।

(C) 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-APPEALBrief Facts of the Case:

M/s.Jindal Worldwide Limited (GSTIN 24AAACJ3816G1ZX), Jindal House, Opp.D-mart, I.O.C. Petrol Pump Lane, Shivranjani Shyamal 132 Ft Ring Road, Satellite, Ahmedabad, Gujarat - 380015 (hereinafter referred as 'Appellant') has filed the appeal against the following Refund Rejection order ZM2408230341856 dated 23.08.2024(hereinafter referred as 'Impugned Order')passed by the Deputy 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 - GSTN 24AAACJ3816G1ZX, had filed the refund application vide ARN No.AA240623088458V dated 22.06.2023 on account of "Refund on account of ITC accumulated due to Inverted Tax Structure"for an amount of Rs.23,79,161/- for the period June'2021 under Section 54 of the CGST Act, 2017 (herein after referred to as the "said Act") read with Rule 89(5) of the CGST Rules, 2017 (herein after referred to as "the CGST Rules"). The appellant engaged in the manufacturing and trading of various textile products apart from spinning, weaving, and finishing of the same.The appellant has accumulated credit on account of rate of tax on inputs being higher than the rate of tax on output. Appellant filed the refund application under the category of ITC Accumulated due to inverted tax structure, in accordance with Section 54(3) of the CGST Act, 2017. After verification of said refund claim, SCN dated 07.08.2023 in Form GST-RFD-08 was issued to the appellant whereby no reason for proposing rejection has been mentioned.

3. Thereafter, the adjudicating authority rejected the above refund claim of Rs. 23,79,161/- vide the impugned order on the grounds that the refund has been restricted to the ITC as per those invoices, details of which are uploaded by the supplier. No details of the working were found to be given in the impugned order.

4. Being aggrieved with the impugned order dated 23.8.2023, the appellant preferred appeal before the appellate authority on 22.11.2023 on the following grounds;-

- i. The appellant stated that they have been not been heard before issuance of refund rejection order and thus the adjudicating authority has violated the conditions of the principle of natural justice and lacks transparency in the impugned order; The authority did not provide any calculation or

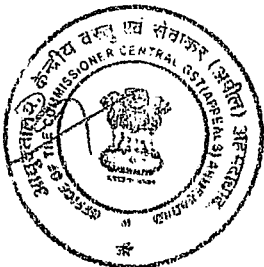
methodology used by them to arrive at the figures mentioned in the SCN, and simply stated that "Inverted turnover is 2,26,03,39,613/-, hence refund is inadmissible". The actual inverted rated turnover is not Rs.2,26,03,39,613/- as presumed by the adjudicating authority, but is Rs. 1,49,17,09,943/-.

- ii. The appellant has given the details of their trading turnover and inverted turnover, and has not considered the turnover arising from trading activity irrespective of rate of tax, may it be at 5%, 12% or 18% in inverted rated turnover. The details of which is in a tabulation form as under:

Particulars	Domestic Turnover			Export turnover 5%(D)	Total turnover (E) (A+B+C+D)	Tax payable on (E)
	5% (A)	12%(B)	18%(C)			
Non inverted rate turnover (Trading sale including zero rated sales)	60,70,37,099	16,16,34,028	40,65,320	37,75,58,075	1150294522	6,93,65,762
IDS turnover	1,49,17,09,943	-	-	-	1,49,17,09,943	7,45,85,503
Total	2098747042	161634028	4065320	377558075	2642004465	143951266

- iii. The appellant has relied upon the Hon'ble SC in the case of State of MP Vs. Narmada BachaoAndolan [(2011)7 SCC 639] where it has been held that where the law creates a duty or a charge and the party is disabled to perform it without any fault on his part and has no control over it, the law will in general excuse him. Have also relied upon the Delhi HC in the case of VDS Colors and Chemicals Pvt Ltd., Vs Principal Commissioner, Delhi where it was held that in case when the officers are unable to communicate allegations due to only option available for selection on common portal, such notices may be served physically. Any notice that does not clearly state allegations with reasons enabling taxpayer to respond cannot be considered as a valid SCN. Further, has relied upon various judgements in the similar issue of transparency.

- iv. The Assistant Commissioner has contravened the provision stipulated under Section 54 and related rules while rejecting the refund claim. The adjudicating authority accepted all figures provided in RFD-01 as per Rule 89(4) of CGST except for the inverted rate turnover and resulting tax payable on such inverted rated turnover. Both the SCN and the impugned order does not give precise figure of inverted rate turnover, and the appellant found themselves that the Asst. Commissioner has included the turnover which has higher rate of tax and also the trading



turnover. The adjudicating authority has not considered the reply furnished in response to the SCN while issuing the impugned order.

- v. As per the formula prescribed under Rule 89(5), in total four terms are used in the formular for calculating the maximum refund amount namely; net ITC, adjusted total turnover, turnover of inverted rated supply of goods and services, and tax payable on such inverted rated supply of goods and services. When they are engaged in the trading activity, the input and output products remain the same having the same rate of tax and therefore there arises no accumulated of ITC on account of inverted duty structure. Therefore, the appellant has not considered the turnover arising from trading activity irrespective of rate of tax, may it be at 5%, 12% or 18% in inverted rated turnover.
- vi. The adjudicating authority has given any justified reasoning / arbitrariness for rejecting the refund neither in the SCN nor in the impugned order; She simply stated that the turnover of inverted supply is Rs.226,03,39,613/-, therefore admissible refund comes to Rs.0/-.
- vii. With the above submissions, the appellant has requested to allow their appeal.

PERSONAL HEARING


5. Personal hearing in the matter was held on 21.02.2024, whereby Shri Kunal Agrawal, Chartered Accountant appeared before me on behalf of the appellant as authorized representative. He reiterated the written submissions further submitted that as per Circular 135/05/2020-GST dated 31.03.2020 para 3.2, trading goods turnover should not be counted while calculating the refund of inverted duty structure goods. In view of the above, requested to allow their appeal and stated that the said issue is already decided vide OIA No.171/2023-24.

DISCUSSION & FINDINGS

6. I have carefully gone through the facts of the case, grounds of appeal, submission made by the *appellant* and documents available on record. I find that *Appellant* filed the refund application of ITC Accumulated due to inverted tax structure, in accordance with Rule 89(5) of CGST Rules, 2017 (herein after referred to as the "*said Rules*") read with Circular No. 125/44/2019-GST dated 18.11.2019, Circular No. 135/05/2020-GST dated 31.03.2020 for the period from June'2021 under Section 54 of the CGST Act, 2017 .

7. The adjudicating authority vide impugned order has rejected the refund claim just quoting that the refund has been restricted to the ITC as per those invoices, details of which are uploaded by the supplier. No details of the working of the refund claim has neither been mentioned in the show cause notice nor in the impugned order. As per the impugned order, it is seen that no deficiency memo has been issued to the appellant wherever discrepancies noticed. Further, it is observed no personal hearing opportunity has been given to the appellant. I observe that the appellant in their grounds of appeal at para 4(ii) above, has clearly tabulated the details of the inverted duty structure turnover and their trading turnover. In the impugned order, it is not clear how the adjudicating authority arrived at the turnover detailed at para 14 of the impugned order.

8. Further, it is observed that the *appellant* is mainly contending that the refund is rejected without being heard them and not considered their reply to the show cause notice and thus violated the principle of natural justice. Neither the Show cause notice dated 07.08.2023 nor the impugned order dated 23.08.2023 given proper reasoning for the rejection of the Refund claim filed by the appellant. The appellant has every right to know, on what grounds his refund claim has been rejected. As per the proviso to 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.

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.)*.

9. 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.

10. 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)*.



11. 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)
28/03/2024

Joint Commissioner (Appeals)

Attested

Date: .03.2024

Vyayalakshmi V
(Vyayalakshmi V)
Superintendent (Appeals)

By R.P.A.D.

To,
M/s. Jindal Worldwide Limited
Jindal Corporate House, Opp. Dmart,
IOC Petrol Pump Lane,
Shivranjani Shyamal 132 Ft Ring Road,
Satellite, Ahmedabad, Gujarat 380 015.



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 Commissionerate.
4. The Dy/Assistant Commissioner, CGST, Division-VII Ahd South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
- ✓ 6. Guard File.
7. P.A. File

