



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20230664SW00002252B1

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/54/2023 -APPEAL  
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-39/2023-24  
दिनांक Date : 07-06-2023 जारी करने की तारीख Date of Issue : 07-06-2023

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. ZK2410220137891 DT. 14.10.2022

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

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M/s. Kevin Process Technologies Pvt Ltd. Plot No. A-1-3706, GIDC Phase-IV,  
Vatva Industrial Area, Vatva, Ahmedabad-382445

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> 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> .



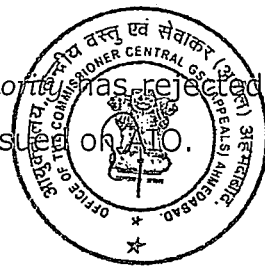
**ORDER-IN-APPEAL****Brief Facts of the Case :**

**M/s. Kevin Process Technologies Pvt. Ltd.**, Plot No. A-1-3706, GIDC, Phase-IV, Vatva Industrial Area, Vatva, Ahmedabad – 382 445 (hereinafter referred as '**Appellant**') has filed the present appeal against the Order in form RFD-06 bearing No. ZK2410220137891 dated 14.10.2022 (hereinafter referred as '**impugned order**') passed by the Assistant Commissioner, CGST, Division – II, 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.24AAACK8850D1ZQ had filed the refund application under category "On account of Refund by Supplier of deemed export" on dated 27.08.2022 for Rs.2,82,600/- for the period of April'2022. In response to said refund application a Show Cause Notice dated 30.09.2022 was issued to the '**Appellant**' with Remarks as "There are existing demands against the taxpayer. Here are the details of the demands **1. Demand ID-ZD2411210134049, SGST-197615 (Tax – 108001 + Int. – 68014 + Pen-21600). 2. Demand ID ZD2411210134057, SGST-5355 (Tax-2927 + Int.1842 + Pen.-586). Please pay the before mentioned demands and submit the proof of payments. Thereafter, the refund will be processed**". Thereafter, the said refund application is rejected by the '**Adjudicating Authority**' vide '**Impugned Order**' on the following grounds –

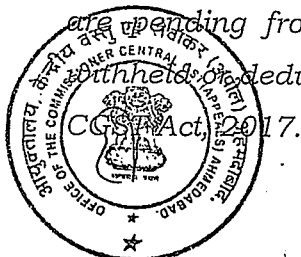
- The claimant did not attend the Personal Hearing but furnished reply to SCN, wherein stated that they have Stay Order for Demand ID ZD2411210134049 and for second demand they produced proof of payment made.
- From the stay order it is not clear whether the same is related to subject demands, as Demand ID number is not mentioned in Stay Order. Further, from the Challan it is also not clear that payment is made for particular demand in question. The claimant has also not submitted proof of payment into government account.
- In view of above, the reply of claimant is not satisfactory and reliable. Therefore, refund to claimant cannot be considered till the subject demands are set-off.

In view of above, the Adjudicating Authority has rejected the refund claim of Rs.2,82,600/- and RFD-06 is being issued on 21/10.



2(ii). Being aggrieved with the *impugned order* dated 14.10.2022 the 'Appellant' has filed the present appeal on dated 22.12.2022 on the following grounds :

- They supplied deemed export consignment to Kusum Healthcare Limited vide their E-Invoice Acknow No. 162211714732849 dated 14.04.2022 Rs.18,52,600/- (Basic Rs.15,70,000/- + IGST Rs.2,82,600/-
- They filed refund application for refund of Rs.2,82,600/- vide ARN No. AA240822098296V.
- The Ld. AC, CGST, Division – II Ahmedabad (South) has wrongly rejected their refund application of Rs.2,82,600/- mainly on the ground that there are existing demands against Tax Payer.
- Merely because of OLD DEMAND raised during VAT period for which they have preferred an VAT Appeal, their claim of Refund cannot be denied and rejected.
- They have obtained Stay Order for Demand ID – ZD2411210134049 and submitted to Adjudicating Authority on 30.09.2022.
- Adjudicating Authority has taken wrong view about Stay Order that it is not clear from Stay Order whether it is for same demands or Not as Demand ID is not mentioned in Stay Order.
- In case of VAT Appeal, All Stay Orders are issued without demand ID.
- Their jurisdiction is Central and not State. If their jurisdiction is State than their Refund Application would not be rejected because they are aware about VAT Appeal procedure and how Stay Order is issued and they must have considered it and their Refund Application was not rejected by them.
- They have all supporting documents and evidence which can proves deemed Export. Ld. Adjudicating Authority has confirmed in the impugned order that –
  - o Necessary procedure has been followed while supplying of goods regarded as deemed export.
  - o Claimant has attached an undertaking of recipient that he has not claimed Refund or Avail ITC in respect of the supplies for which refund has been claimed.
  - o It has been verified from the GSTR-3B of the claimant that the IGST has been paid in respect of the supplies regarded as deemed export.
  - o All the returns have been filed by the claimant till date. No dues are pending from the Applicant. No amount is required to be withheld or deducted under the provisions of Section 54(10) of the



- They have not received said IGST amount of Rs.2,82,600/- from their customer Kusum Healthcare Limited (GSTN : 08AABCK7043B1ZW). In other word their customer has not paid GST amount.
- They have no malafide / Fraudulent intention in claiming GST Refund.

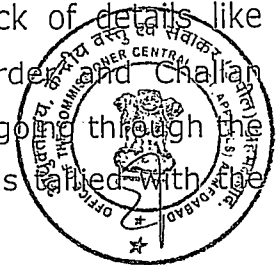
In view of above submission, the appellant has made prayer that their appeal may be allowed and refund may be granted to them.

3. Personal Hearing in the matter was held on 26.04.2023 wherein Mr. Divyang Patel, C.A. and Mr. Pinakin Bhavsar were appeared on behalf of the 'Appellant' as authorized representatives. During P.H. they have stated that they have not been heard before passing impugned order; 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 April'22 for refund of Rs.2,82,600/- under category 'on account of Refund by Supplier of deemed export'. In response to said refund application a SCN was issued to appellant proposing rejection of refund mainly on the ground of existing demands of Tax, Interest and Penalty pending against the appellant. The appellant had furnished the reply to SCN wherein produced copy of Stay Order in respect of demand of Rs.1,97,615/-. Whereas, for the second demand of Rs.5355/- the appellant had produced copy of challan as proof of payment made by them. However, the adjudicating authority has rejected the refund claim for the reasons that Stay Order as well as Challan does not contain details like Demand ID so, it is not clear from said Stay Order or Challan that it pertains to same demands which are in question. Accordingly, the adjudicating authority has held that the reply of appellant is not satisfactory and consequently rejected the refund claim.

4(ii). In view of above, I find that the adjudicating authority has rejected the refund claim mainly on the ground of pending of existing demands; and in respect of said demands the copy of Stay Order and Challan produced by the appellant are also having lack of details like Demand ID Number, which proves that said Stay Order and Challan pertains to said demands in question only. However, on going through the copy of Stay Order I find that the amount of demand is tallied with the



demand in question and as per said Stay Order the appellant has made payment of 20% of outstanding liability thus stay granted for recovery of remaining amount till 31.12.2022. Further, on going through the copy of Challan, I find that the amount paid by appellant is tallied with the demand amount in question. However, the adjudicating authority has rejected the refund claim considering the reply of appellant as not satisfactory, without further making any inquiry or verifying or consulting the concerned department or concerned state authority.

**4(iii).** Since, the refund claim is rejected based on pending existing demands, I find it pertinent to refer relevant provisions i.e. Section 54(10) of the CGST Act, 2017, same is reproduced as under :

**Section 54. Refund of tax -**

*(10) Where any refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may-*

*(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;*

*(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law .*

**Explanation.**-For the purposes of this sub-section, the expression "specified date" shall mean the last date for filing an appeal under this Act.

In view of above, it is clear that when any refund is due to registered person, who is required to pay any tax, interest or penalty the proper officer may withhold payment of refund due, until the said person has paid the tax, interest or penalty. Further, as per above provisions the proper officer may deduct from refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under GST Act or existing law. However, I find that the proper officer may not take such action where such tax, interest or penalty is stayed by any Court, Tribunal or Appellate Authority. Here, in the present case I find that the appellant has produced the copy of stay order granted by State Tax Authority in respect of one demand notice and for second demand notice the appellant has produced the copy of challan vide which they have made payment of Rs.5355/-. However, without making any further inquiry or verification, I find that the adjudicating authority has held that the reply of appellant is not satisfactory.



**4(iv).** Further, I find that 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 the adjudicating authority has mentioned in the impugned order that appellant has not attended the Personal Hearing. Therefore, I find that the *impugned order* is issued without providing the sufficient opportunity of being heard to the ‘*Appellant*’.

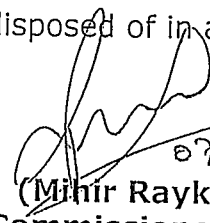
**5.** In view of above, I find that the *adjudicating authority* has violated the principle of natural justice in passing the *impugned order* vide which rejected the refund claim without the considering *appellant’s* Reply to SCN and without being heard the *appellant* as well as without communicating 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 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 the CGST Act, 2017 and rules made thereunder.

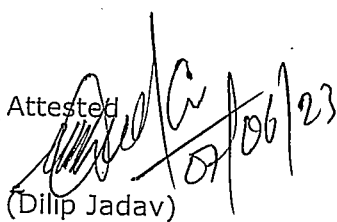
6. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, I allow the appeal of the "*Appellant*" without going into merit of all other aspects, which are required to be complied by the claimant in terms of 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*.

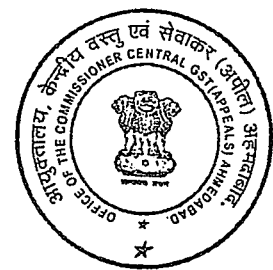
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed of in above terms.

  
07/06/23  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 07.06.2023

Attested   
07/06/23  
(Dilip Jadav)  
Superintendent (Appeals)  
Central Tax, Ahmedabad  
By R.P.A.D.



To,  
M/s. Kevin Process Technologies Pvt. Ltd.,  
Plot No. A-1-3706, GIDC, Phase-IV,  
Vatva Industrial Area, Vatva, Ahmedabad - 382 445

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



