



आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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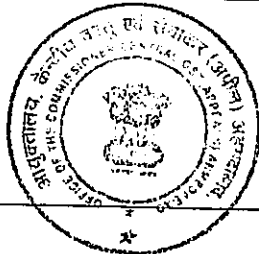


By Regd. Post

DIN NO.: 20240164SW00001631AB

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/3494/3496/2023 / 1135
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-132-133/2023-24 and 30.01.2024
(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	31.01.2024
(ङ)	Arising out of Order-In-Original No. ZI2409230220213 dated 18.09.2023 and ZE2407230388144 dated 27.07.2023 passed by The Assistant Commissioner, CGST, Division-II, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Manohar Ratilal Lodhiya (AUM Exports) (GSTIN: 24ALUPL0226A1ZJ) Ground Floor, B1, Sardarkunj Society, Shahpur Bahay Center, Ahmedabad, Gujarat-380001

(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 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-APPEALBrief Facts of the Case :

M/s. AUM Exports (Manohar Ratilal Lodhiya) GROUND FLOOR, B1, SARDARKUNJ SOCIETY, SHAHPUR BAHAY CENTER, AHMEDABAD, Ahmedabad, Gujarat, 380001 (GSTIN No.24ALUPL0226A1ZJ) (hereinafter referred as "Appellant") have filed the present appeals as against the Orders mentioned against each, passed in the Form-GST-RFD-06 (hereinafter referred as "impugned order") rejecting the refund claims of Rs.1,72,764/- and Rs.7,69,504/- issued by the Assistant Commissioner, CGST & C.Ex., Division-II, Ahmedabad-North (hereinafter referred as 'adjudicating authority').

Sl. No.	Refund application No. and date	Amount of Refund (Rs.)	OIO No. and date	Appeal No.with date of filing
01	ARN No. AA2405231673286 dated 28.05.2023	1,72,764/-	ZE2407230388144 dated 27.07.2023	GAPPL/ADC/GSTP/3496/2023 dated 21.10.2023
02	ARN No. AA240723792174 dated 21.07.2023	7,69,504/-	ZI2409230220213 dated 18.09.2023	GAPPL/ADC/GSTP/3494/2023 dated 21.10.2023

2. Briefly stated the facts of the case are that the 'Appellant' had filed refund applications for refund of Rs.1,72,764/- and Rs.7,69,504/- on 28.05.2023 and 21.07.2023 respectively in the category of "Refund of IGST paid on export of goods (Refund not processed by ICEGATE)". The said refund applications were received by the refund sanctioning authority as per the Instructions No.04/2022-GST dated 28.11.2022 issued by the Pr.Commissioner, GST Policy Wing vide F.No.CBEC-20/08/02/2020-GST/1377-78 regarding manner of processing and sanction of IGST Refund, withheld in terms of clause (c) of sub-rule 96, transmitted to the jurisdictional GST authorities under sub-rule (5A) of rule 96 of the CGST Rules, 2017.

The verification of genuineness and correctness of the ITC availed by the Appellant, as per para 8 of the Instructions No.04/2022-GST dated 28.11.2022, was conducted. The said para reads as under:

"8. The proper officer shall ascertain the genuineness of the exporter and verify the correctness of availment and utilization of ITC by exporter and

exercise due diligence in processing the said refund claims to safeguard interest of revenue. The proper officer may conduct the physical verification of places of business of the exporter, if required, to ensure that the exporter is existing at his declared place of business and is functional/ active."

On verification by the proper officer, the registered premises of the Exporter/Appellant, was found in existence. Financial Verification was also done in respect of the appellant and it was noticed that the appellant had availed ITC as per ITC availed in GSTR-2A and no discrepancy was noticed. However, as per the remarks generated by the System with the RFD-01 of the appellant, verification of the GSTR-2A of the appellant was done and it was noticed that the appellant had availed ITC during the period July-2022 to September-2022, to the tune of Rs.14,32,800/-, from the Non-existence/ ab-initio cancelled firm viz. M/s Jaynt Enterprice, GSTIN 24PNVPS6932J1ZS, cancelled by the Department.

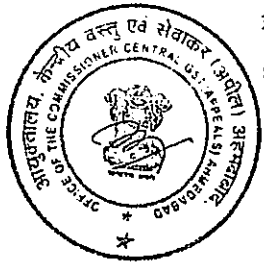
Therefore, show-cause-notices were issued to the appellant dated 14.07.2023 and 05.09.2023 as to why IGST refund amount of Rs.1,72,764/- and Rs.7,69,504/- respectively should not be rejected.

3. The adjudicating authority vide the impugned orders, rejected the refund claim of Rs.1,72,764/- and Rs.7,69,504/- stating that the reply submitted by the appellant received by them on 26.07.2023 and 13.09.2023 respectively in respect of both the SCNs dated 14.07.2023 and 05.09.2023 are not accepted. In respect of OIO dated 18.09.2023, the adjudicating authority apart from the reply of the appellant not accepted, also mentioned that the Input Tax Credit availed by the appellant from the supplier whose registration has been cancelled ab-initio, is not valid.

4. Being aggrieved, the appellant filed the present appeal on the following grounds:

"The Impugned Order has been passed in ignorance and/or without fully appreciative of the facts, relevant to the present proceedings and contrary to the applicable legal provisions and the settled law on the legal issues involved and is in violation of principle of natural justice. The Impugned Order is also non-speaking therefore, bad in law and deserves to be set aside for the reasons set out herein below:

1. Exports were never challenged.



- the present refund has arose as a result of export of goods with payment of IGST (shipping bills details provided above) which is being allowed to be exported out of India vide LEO by the proper officer at the port of export. These exported goods were manufactured out of material procured and used in process of manufacturing hence the contention of the respondent that goods are not received is arbitrary and is based on assumption, presumption & surmises and hence not sustainable.
- that exports were done March 2023, April-2023 and MAY-2023, however the Input Tax Credit (ITC) which is in challenge is during the period July 2022 to Sept 2022. The Ld Adjudicating Authority failed to establish the nexus as to same goods were used in manufacturing or otherwise.

2. ITC cannot be denied without verification of genuineness of a taxpayer:

- as per alleged SCN, Appellant have made transactions with the Bogus Supplier, however the registration and return filing details of the supplier shows that they have already filed their GSTR-3B and GSTR-1 and the same is also visible in GSTR-2A of the Appellant for the respective tax period thereby stating that all the taxes have been correctly discharged by the supplier. Hence the supply cannot be termed as bogus supply.

The Appellant would further like to state that registration cancellation effecting back date cannot be a reason for declaring a bogus supply. The Appellant would like to attach the status of supplier from (GSTIN Portal evidencing Back dated Cancellation that the Appellant is in possession of all necessary documents and would like to mention that the Appellant have verified the Supplier status to whatever extent possible on Appellant's part when the transaction took place between Appellant and his supplier, however their always have some limitation to ascertain the validity and genuineness of the suppliers as when the transactions took place the status of the supplier was "Active" which is also evidenced from filing status above, and hence later on the Appellant would not be held responsible for any non- genuineness transaction done by the supplier.

- that eligibility of input tax credit should be based on Section 16(1) and Section 16(2) of CGST Act, 2017 and its rules made there under;

Law and Procedure-Onus of eligibility is discharged.

- that the Appellant has fulfilled all the conditions as mentioned in Section 16(1) and Section 16(2) of CGST/GGST Act, 2017 and thereby they have clearly discharged their onus of eligibility of ITC in terms of Section 155 of CGST Act, 2017 and therefore the presumption of non-receipt of supply is non-est.
- This being the case the burden of non-receipt of supply of underlying goods is shifted on the department for which as submitted herein above, the department failed to brought on record any corroborative evidence which prove that the Appellant has not received underlying supply reflected in the Invoices from supplier.

3. Entire transaction has been made through Banking Channel and Flow back of money is not brought on record.

- that in the case of Plethico Pharmaceuticals Ltd V/s Commissioner of C. Ex., Indore reported in 2006 (205) E.L.T. 227 (Tri. - Del.), the Hon'ble Principal Bench CESTAT, New Delhi clearly held that there is no evidence on record to show that the amount, which was paid through cheques, was ultimately returned to the Appellant. In the absence of such evidence, the penalty imposed on the appellant is not sustainable and should therefore be set aside.
- that the aforementioned order, although from the Central Excise era, still holds principles applicable to the GST era as well. This case law is squarely applicable to the present case. These aspects were not examined by the learned adjudicating authority even though it was brought to the kind knowledge of the respondent.
- The Appellant would like to rely in case of Arise India Ltd as reported in Excus 2022 (60) G.S.T.L. 215 (S.C.) where in Honorable Apex Court held that treating a guilty purchaser and an innocent purchase equally violates Article 14 of the Constitution of India. The purchase cannot do the impossible task of anticipating that the seller will not deposit the collected tax to the government.
- Similar view has been upheld by Apex court in case of 2018 (10) G.S.T.L. 182 (Del. HC) ON QUEST MERCHANDISINGINDIA PVT. LTD. Versus GOVT. OF NCT OF DELHI.
- Accordingly, the Appellant have reason to say and submit that the confirmation of disallowing ITC and proposed recovery by way of rejection of refund claim not sustainable and also the demand is confirmed with pre-judice mind set hence the same is otherwise bad in law.

4. Recovery Proceedings as per Section 76 of CGST Act, 2017 should be in the hands of supplier.

- that as per 76 (2) of CGST Act, 2017, notice to be issued by the proper officer to the person who has collected the tax required to be paid to government, however the same has not been paid, tax amount and penalty to be recovered from the said person.
- that tax firstly should be collected from supplier as the supplier has already collected the tax from the Appellant and it is the responsibility of the supplier to pay the tax to government which he has collected and in the said transaction the ITC cannot be denied in the hands of recipient.
- The Appellant hereby rely in case of DY Beathel Enterprises [2021 (3) TMI] 1020-Madras HC) where in its held that first supplier has to be summoned and GST department should ask them to pay GST and no automatic reversal of ITC can take place.

5. The Appellant could not be held responsible for cancellation of suo-moto cancellation of their supplier.

- that they are not aware for what reason the registration of the said three suppliers are cancelled suo-moto nor the Appellant is concerned in any way with its cancellation not the Appellant has been provided with any documentary evidence clearly mentioning any reason for cancellation of GSTIN of the supplier. Whatever may be the reason for cancellation of registration, however the Appellant could not be held responsible for the supplier's lapse when at the part of Appellant all due case has been taken for compliance all legal provisions along with documentary evidence.
- It is well settled law that no one can be made to suffer for the fault of another as observed by the Hon'ble High court of Madhya Pradesh while deciding Writ Petition No.14297 of 2020 in the case of Agrawal and Brothers vs Union of India & Others. {Delivered on 13.06.2023} reported in 2023 (6) TMI 940.

6. No Specific allegation on the Appellant

- that they have been generally alleged for the violation of Section 16(2) for which they aren't part of and the respondent has failed to provide the specific violation and on this sole ground also the impugned order is bad in law.

It is well settled law that in absence of any specific allegation the entire demand is bad in law and this view is also upheld by the Hon'ble High court of Allahabad as reported in TMI 2023 (7) TMI 814 while deciding Writ Petition No.834 of 2023 in the case of Ashish Kakkar Versus Union Of India And Another.

7. Refund cannot be rejected until any proceedings are pending against taxpayer:

- It is being humbly submitted by the Appellant that the refund was rejected on ground of availment of ITC from non-existence/ ab-initio cancelled dealer (M/s Jaynt Enterprise), the tax amounting to Rs.14,32,800/-. The Appellant in this respect would like to state and submit that there arises no nexus between present exports and past purchases and recovery proceedings cannot be initiated against the Appellant as the Appellant have never been subjected to any Adjudication in this regard.
- The Appellant would further like to state that the Appellant has already deposited Rs.9,62,800/- (Rs.4,00,000/- on 18.08.2023, Rs.3,50,000/- on 16.09.2023 and Rs.2,12,800/- on 21.10.2023) under protest and removing the tag of Risky Exporter. And assured for balance payment in due course of time.
- From the above its being clear the refund of the Appellant is being rejected on this ground and hence in the true spirit of justice the benefit of refund cannot be denied to the Appellant on this ground as well on the ground that the supplier's GSTIN has been cancelled on ab-initio basis.

8. Violation of Principal of Natural Justice:

- It is well settled law that any action prejudicial to the Appellant is taken, he should be heard in person and he should not be deprived the right of being heard.
- Opportunity for hearing also includes personal hearing apart from making written representation. Requirements of a fair hearing has two elements- First that Opportunity to be heard must be given and second that Such opportunity must be real and not illusory and make believe 1983 (14) ELT 1685 (Ker). A fair and reasonable hearing means a hearing which is adequate for the purpose of bringing before the officer who makes the decision all the relevant submissions. If fresh factual evidence is brought in and is likely to influence the decision, a fresh hearing should be given 1978 (2) ELT 1320(SC).
- Further considering the past history and settled position of law, no orders can be made without following the principals of natural justice and in this relation the board have repeatedly issued various guidelines and recently such detailed guidelines have also been issued by Board as per Instruction No.03/2022-GST Dt. 14.06.2022 for processing of refund claims in GST which states that Principle of Natural Justice to be followed and for that detailed speaking order needs to be issued providing a basis for sanctioning or rejecting a refund. From the available facts and rejection order it is established that the opportunity of being heard was not given before the Appellant's claim was rejected vide impugned order this is being clear violation of principal of natural justice, the rejection order deserves to be quashed.

9. Non speaking orders are bad in law.

The Appellant hereby humbly submits that the learned Adjudicating authority has not explained the reason of rejection of refund and the learned Adjudicating authority has mentioned in the rejection order that reply to the alleged SCN has not been accepted, however reason of non-acceptance of reply has not been mentioned in the said rejection order and to such extent the said rejection order is non-speaking.

10. Refund should be given along with interest.

- The Appellant in this respect would like to state that the Appellant deserves the right of interest along with the refund amount as also backed by the order of the Honorable Supreme Court in the case of Ranbaxy Laboratories Limited versus Union of India in Civil Appeal No. 6823 of 2010 with C. A. Nos. 7637 of 2009 and 3038 of 2010, decided on 21-10-2011.
- request for interest from the date of Shipping Bill as the date of filing of Shipping Bill would be considered as the date of export and request to kindly order to sanctioning the refund.

The Appellant has requested to set aside the impugned order and consider the refund along with applicable interest for causing delay in processing the refund.



5. Personal Hearing in the matter was held on 12.12.2023 wherein Shri Manohar Ratilal Lodhiya, Chartered Accountant on behalf of the appellant as authorized representative appeared in person. He submitted that the issue related to DGARM has nothing to do with the current refund. He further submitted that the submissions made in reply to SCN have not been considered at all even not discussed in O-I-O and refund application is simply rejected by the Ld. Refund sanctioning authority by saying "not acceptable". Therefore the order is non-speaking and bad in Law. It is further submitted that the issue related to DGARM is not decided and the amount is directly adjusted in refund by way of rejection of Refund order which is totally against the principle of natural justice.

In view of the above, requested to allow appeal.

Additional Submissions:

The Appellant vide letter dated 19.01.2024 has submitted further submissions as under:

The appellant have paid back the whole ITC of M/sJaynt Enterprice "under protest" through various DRC-03s, the details of which are as under:

Sl.No.	CGST	SGST	Total Tax	DRC-03 Ref No. and date
01	2,00,000/-	2,00,000/-	4,00,000/-	AD240823010291L dated 18.08.2023
02	1,75,000/-	1,75,000/-	3,50,000/-	AD240923007997O dated 16.09.2023
03	1,06,400/-	1,06,400/-	2,12,800/-	AD241023011806M DATED 21.10.2023
04	72,500/-	72,500/-	1,45,000/-	AD241123007717F dated 22.11.2023
05	1,62,500/-	1,62,500/-	3,25,000/-	AD240124024964A dated 16.01.2024
Total	7,16,400/-	7,16,400/-	14,32,800/-	

The appellant has further requested to set aside the rejection order and sanction the refund in the interest of justice.

DISCUSSIONS AND FINDINGS:

and shall duly upload the same along with the refund sanction order in Form GST RFD-06 on the portal in terms of Instruction No. 03/2022-GST dated 14.06.2022. The officer will also follow the timelines for processing of the refund claim in terms of provisions of sub-section (7) of section 54 of the CGST Act.

6.5 I observe that the adjudicating authority has followed the instructions issued by CBIC vide Instruction No.04/2022-GST dated 28.11.2022 regarding ascertainment of the genuineness of the exporter & verification of the correctness of availment and utilisation of ITC by the appellant as per para 8 of the said instructions, however at the same time it is equally important that the adjudicating authority adheres to the principles of natural justice. It is observe that the adjudicating authority has passed the impugned order without following the instructions as at para 9 of the Instruction No.04/2022-GST dated 28.11.2022 wherein it has been specifically instructed that "the proper officer shall pass a detailed speaking order in respect of the refund claim". The impugned orders rejecting the refund claims of the appellant are passed for rejecting the same by simply saying that the reply submitted by the appellant is not accepted, without mentioning any reasons in detail for the same.

6.6 It is settled legal position of law that reasons are heart and soul of the order and non communication of same itself amounts to denial of reasonable opportunity of hearing, resulting in miscarriage of justice. The Hon'ble High Court of Gujarat in C/SCA/18860/2021 JUDGMENT dated 24/02/2022 in case of M/s AGGARWAL DYEING AND PRINTING WORKS Versus STATE OF GUJARAT & 2 other(s), have noticed and held as under:

"11. At the outset, we notice that it is settled legal position of law that reasons are heart and soul of the order and non communication of same itself amounts to denial of reasonable opportunity of hearing, resulting in miscarriage of justice. This Court is bound by the said judgments hereinafter referred to:

The necessity of giving reason by a body or authority in support of its decision came for consideration before the Hon'ble Supreme Court in several cases. Initially, the Supreme Court recognized a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time

6. I have gone through the facts of the case, available documents on record and written submissions made by the 'Appellant'. I observe that the main issue to be decided in both the cases is:

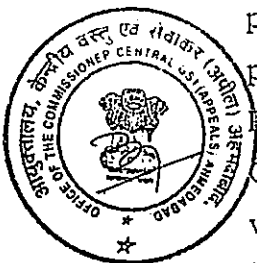
(i) whether the impugned refund order passed by the Adjudicating Authority is legal & proper or otherwise?

6.1 At the foremost, I observed that in the instant case the "impugned order" is of dated 27-07-2023 and 18-09-2023 and the present appeals are filed online on 21-10-2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. Therefore, I observe that the present appeals are filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Further, as the issue involved in both the appeals is similar, I am proceeding to decide the case of both the appeals together by this common order.

6.2 It is observed that the appellant had filed two refund applications dated 28.05.2023 and 21.07.2023 for Rs.1,72,764/- and Rs.7,69,504/- respectively. The said refund applications were received by the authority in the category of "Refund of IGST paid on export of goods (Refund not processed by ICEGATE)" and the said refund applications were received as per the Instruction No.04/2022-GST dated 28.11.2022 issued by the Pr.Commissioner, GST Policy Wing vide F.No.CBEC-20/08/02/2020-GST/1377-78 regarding manner of processing and sanction of IGST Refund, withheld in terms of clause (c) of sub-rule 96, transmitted to the jurisdictional GST authorities under sub-rule (5A) of rule 96 of the CGST Rules, 2017.

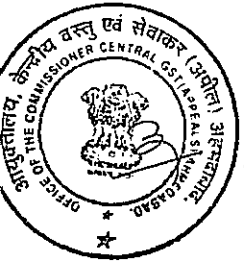
6.3 As per the said Instruction No.04/2022-GST dated 28.11.2022, as per para 8, the proper officer shall ascertain the genuineness of the exporter & verify the correctness of availment and utilisation of ITC by the exporter and exercise due diligence in processing the said refund claims to safeguard interest of revenue. The proper officer may conduct the physical verification of places of business of the exporter, if required, to ensure that the exporter is existing at his declared place of business and is functional/active.

6.4 Further, as at para 9 of the said instructions, the proper officer shall pass a detailed speaking order in respect of the refund claim



the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of the Hon'ble Supreme Court in *A.K. Kraipak v. Union of India*, (1970) 1 SCR 45. The Hon'ble Supreme Court vide judgments in the cases of *Ravi Yashwant Bhoir v. District Collector Raigad*, (2012) 4 SCC 407, *Sant Lal Gupta v. Modern Cooperative Group Housing Society Limited*, (2010) 13 SCC 336; *Kranti Associates Private Limited v. Masood Ahmed Khan*, (2010) 9 SCC 496; *Abdul Ghaffar v. State of Bihar*, (2008) 3 SCC 258, has expanded the horizon of natural justice and reasons have been treated part of the natural justice. It has gone to the extent in holding that reasons are heart and soul of the order. The absence of reasons renders an order indefensible/unsustainable particularly when it is subject to appeal/revision. It is to be noted that in the case of *Kranti Associates v. Masood Ahmed Khan*, (2010) 9 SCC 496, the Hon'ble Supreme Court after considering various judgments formulated certain principles which are set out below:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- g. Reasons facilitate the process of judicial review by superior Courts.
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- j. Insistence on reason is a requirement for both judicial accountability and transparency.
- k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person



deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737);

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553 at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decision."

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

Thus, the position of law that emerges from the decisions mentioned above, is that assignment of reasons is imperative in nature and the speaking order doctrine mandates assigning the reason which is the heart and soul of the decision and said reasons must be the result of independent re-appreciation of evidence adduced and documents produced in the case."

.....

19. In the result, all the writ applications deserve to be allowed solely on the ground of violation of principles of natural justice and, accordingly, the writ applications are allowed....."

6.7 Further, the Hon'ble Madras High Court recently in a writ petition No.29095 of 2023 in case of M/s. Chennai Silks Vs. The Assistant Commissioner (ST) (FAC), Tirupur South Assessment Circle, Tirupur has held as under:

"12. In the present case, the respondent/Assessing Officer, admittedly, has failed to consider the reply/objections made by the petitioner pursuant to the show cause notice and passed a non-speaking order. The learned counsel also brought to the notice of this Court certain paragraphs mentioned in the show cause notice were re-produced in the impugned order. Therefore, failure on the part of the respondent/Assessing Officer to address the reply/objections of the petitioner/assessee by a speaking order, would vitiate the impugned proceedings.

13. On this score, since the reply/objections made by the petitioner pursuant to the show cause notice remained undecided, this Court feels that the petitioner is entitled to have a considered opinion of the Assessing Officer after taking into consideration the reply filed by the petitioner. Thus, this Court is inclined to set-aside the impugned order and remit the matter back for re-consideration. Accordingly, the Assessing Officer is directed to pass a detailed order after taking into consideration the reply filed by the petitioner.

14. In the result, the Writ Petition is allowed and the impugned order is set-aside. The matter is remitted back to the respondent for reconsideration of its order, taking into consideration the reply filed by the petitioner dated 17.1.2022 and 02.2.2022. Needless to say that principles of natural justice shall be followed. No costs. Consequently, the connected WMP is closed."

6.8 It is observed that the present appeal is filed to set aside the impugned order as the adjudicating authority has rejected an amount of Rs.1,72,764/- and Rs.7,69,504/- by simply mentioning in the impugned order dated 27.07.2023 that "Reply of the said SCN was received on 26.07.2023 and the reply of the claimant is not accepted" and in the impugned order dated 18.09.2023 that "Reply of the said SCN was received on 13.09.2023 and the reply of the claimant is not accepted. Input Tax Credit availed by the claimant from the supplier whose registration has been cancelled ab-initio is not valid." Further, the status of the SCNs dated 14.07.2023 and 05.09.2023 issued to the appellant in respect of ARN No. AA2405231673286 dated 28.05.2023 and ARN No. AA240723792174 dated 21.07.2023 respectively, whether disposed off or otherwise is also not clear from the impugned order. It is also noticed that principles of natural justice have not been followed by the adjudicating authority before passing such order. Thus, I am of the view that before rejecting such order, the appellant should have been given at least an opportunity to explain the matter before them. It is also observed, that the adjudicating authority has passed the order without citing the detailed findings/reasons for rejecting the refund applications of the appellant.

6.9 In view of the above, I observe that the adjudicating authority has grossly violated the principles of natural justice and the impugned order passed is a non-speaking order in as much as the reasons/detailed order rejecting the refund claims dated 28.05.2023 and 21.07.2023 for Rs.1,72,764/- and Rs.7,69,504/- respectively are not recorded in the impugned order, therefore, the judgments as cited in the foregoing paras, are squarely applicable in the present, case. Thus, I am of the view that the impugned order is liable to be set aside being not legal and proper.



6.10 Therefore, the adjudicating authority is hereby directed to pass a detailed speaking order by following the principles of natural justice and grant an opportunity of personal hearing in the matter, to the appellant. The 'Appellant' is also directed to submit all relevant documents/submission before the adjudicating authority.

7. 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 appellant in terms of provisions of the GST Act and Rules made there under. The appellant is also directed to submit all relevant documents before the Refund sanctioning authority, who shall verify the facts and pass speaking order after following the principles of natural justice in letter and spirit.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

8. The appeal filed by the *appellant* stands disposed of in above terms.

Aadesh Kumar Jain
30/01/2024

(ADESH KUMAR JAIN)
JOINT COMMISSIONER(APPEALS)
CGST & C.EX., AHMEDABAD.

Date : .01.2024

Attested

Sunita D. Nawani
(Sunita D. Nawani)
Superintendent,
CGST & C.Ex.,
(Appeals), Ahmedabad



By R.P.A.D.

To

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Copy to:

- 1.The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Appeals, Ahmedabad
- 3.The Commissioner, CGST &C.Ex, Ahmedabad-North Commissionerate.
- 4.The Dy / Assistant Commissioner, CGST & C.Ex, Division-II, Ahmedabad-North
- 5.The Additional Commissioner, Central Tax (System), Ahmedabad-North Commissionerate.
- 6.The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File/P.A. File.

