

IN THE GOODS AND SERVICE TAX TRIBUNAL, NEW DELHI
BENCH

APPEAL NO..... OF 2025

IN THE MATTER OF:
DELHI ENTERPRISES
Karol Bagh New Delhi
GSTIN No.... 1111111111

APPELLANT

VERSUS

JOINT COMMISSIONER (APPEALS)
ZONE IX, DGST DEPARTMENT
NEW DELHI

RESPONDENT

APPEAL UNDER SECTION 112 OF THE DGST ACT AGAINST
THE IMPUGNED ORDER OF THE JOINT COMMISSIONER
(APPEAL) ZONE IX, DGST DEPT. NEW DELHI FOR THE
DATED 24-05-2025 DISMISSING THE APPEAL BEING NOT
MAINTAINABLE.

HON'BLE PRESIDENT OF THE GST TRIBUNAL AND HIS
COMPANION MEMBERS, RESPECTFULLY SHOWETH:

1. The appellant is a Bona fide registered person engaged in the business of trading of tobacco and its allied products for the last many years and has filed all the returns in time and paid the due taxes as per provisions of the law.
2. The appeal has been filed within the limitation period. The Ld. Joint Commissioner (Appeal) passed an Order which was received on dated 24-05-2025 (hereinafter referred to as **“the impugned order”**) and the appeal is being filed on

01-07-2025. The appeal is regarding on the issue of maintainability of appeal and withholding of refund of the appellant.

3. There is no demand raised against the Appellant in the adjudicating authority order or the order of the first appellate authority. Hence the mandatory pre-deposit is not required in the case.

4. The prescribed fees have been deposited as per the law.

FACTUAL MATRIX OF THE CASE:

1. The Appellant has applied for the refund of Rs. 22,50,000- of unutilised input tax credit for zero rated supply as per the provisions of section 16 of the IGST ACT for exports made out of India to Dubai on LUT basis. Export is not disputed.
2. The application for refund was filed in RFD-01 (page no.11) complete in all respect along with all the documents and details as per the law on dated 02-01-2025. And acknowledgement in RFD-02 (page no.12) was issued on dated 13-01-2025 by the dept. The proper officer after having satisfied and after following the procedure, has validly issued a final refund sanction order in RFD-06 (page no.13) on 28-03-2025 u/s 54(5)

of the CGST ACT. The amount of refund has not been disputed by the Proper officer.

3. Later, before the refund was to be credited to the bank account of appellant, the department **alleged** that there were some reports that were considered adverse by the commissioner and commissioner **directed the proper officer to withhold the refund and accordingly the refund was withheld u/s 54(11) of the CGST ACT and order for withholding was issued to the appellant without any reason and without any supporting documents.**

Feeling aggrieved by the impugned order passed on the directions of the Commissioner and issued by the proper officer under section 54(11) of the DGST Act, the appellant preferred an appeal before the first appellate authority constituted for this purpose stating all the facts before him and informing him of the urgency in the matter as the case relates to the refund.

The case was taken up for hearing on merits by the first appellate authority. The first question raised by the first appellate authority was about the maintainability of the appeal on the ground that once the Order is passed by the Commissioner on file and only conveyed by the proper officer, then how is the first appellate authority competent to hear this

appeal notwithstanding he has been constituted as first appellate authority to hear matters decided by the adjudicating authority appointed for that purpose by the Commissioner. However, once the Commissioner himself has passed the order, how is he competent to hear the appeal? The counsel for the appellant vehemently argued that there is no justification in taking this stand as the matter is simple and straight forward. Once the refund order in REFD 06 was issued, the Commissioner may not have power to withhold the same under section 54(11)? However, the first appellate authority observed that the appeal against the orders of the commissioner, conveyed by the proper officer, may not be maintainable. Hence the appeal was dismissed as not maintainable before him.

AGGRIEVED BY THE IMPUGNED ORDER, THE APPELLANT IS APPROACHING THIS HON'BLE TRIBUNAL SEEKING FAIR PLAY AND JUSTICE.

GROUND OF APPEAL:

The question of law before this Hon'ble Tribunal is very crucial for the implementation of the Act as most of the orders on refund on file are passed by the officers who may be higher in rank than the first appellate authorities appointed or they may be of equal rank? If such a procedure

is followed, then, the appellant respectfully says and submits that this would lead to impossible situations and the very purpose of section 107 giving statutory right of appeal to the appellant may be negated by the authorities below? Hence, this appeal is very crucial.

1. The orders of the lower authorities are simply made on the presumptions and conjectures with no substantial proof.
2. That the refund application complete in all respect was filed on dated 02-01-2025. Refund sanction order in RFD-06 must be issued by the proper officer within 60 days as per section 54(7). The proper officer issued RFD-06 on dated 28-03-2025 i.e. delay of 26 days. This is a gross violation of the GST laws.
3. Order for withholding the refund was issued to the Appellant without giving opportunity of being heard. This is a gross violation of principle of natural justice. Reasons and copy of document/reports were not provided with the order for withholding refund.
4. The Department **alleged** that there were some reports, that were considered adverse by the

commissioner. Thereafter, the commissioner directed the proper officer to withhold the refund u/s 54(11). The directions/order of the commissioner to the proper officer was not supplied to us. The first appellate authority observed that this appeal against the orders of the commissioner, conveyed by the proper officer may not be maintainable. Hence, the appeal was dismissed. These reports were not made available nor confronted to us nor our explanations sought on any of the issues raised by the Commissioner – this is against the settled principles of natural justice and makes the orders on file by the Commissioner patently illegal and unsustainable in law.

5. That the refund was withheld by the proper officer u/s 54(11) of the CGST ACT vide his order dated 24-04-2025 and RFD-06 was issued on 28-03-2025. This section is not applicable in this case.

Section 54(11) reads as under:

Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the

said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

RFD-06 issued on 28-03-2025 (final order for refund) was never subject matter of an appeal or further proceedings under this act or any other proceeding pending as on that date. Department cannot withhold the refund. It is without jurisdiction. The refund along with interest must be issued to the registered person immediately.

6. Section 107(1) states that any person aggrieved by any order passed under this act by an **adjudicating authority** may appeal to such appellate authority. Adjudicating authority has been defined in section 2(4) – means any authority, appointed or authorised to pass any order under this act. Hence the appeal to the first appellate authority is legally maintainable as per the law.

7. After receiving the order for withholding of the refund, the Appellant immediately submitted the reply and requested for the alleged reports and

documents etc. on the basis of which the refund is withheld. Our reply was not considered. The Appellant was not provided any report or documents by the proper officer. We would like to examine the documents/reports etc. and cross examine those persons, who have given any adverse statement against us, if any. We are Bonafide registered person. Our suppliers are Bonafide. We have done KYC of the suppliers. And suppliers are available on the registered address. They are regularly filing returns in time. We are filing herewith KYC document in one case on sample basis. All the conditions of section 16 are complied with by the Appellant regarding the ITC. The amount of refund was not disputed by the proper officer.

8. Hence the allegation of the department is not valid and the order of the first appellate authority is liable to be set aside.

PRAYER:

In light of the foregoing submissions, the Appellant most respectfully prays that this Hon'ble Tribunal may be pleased to:

1. Allow the present appeal in its entirety;

2. Set aside and quash the impugned order passed by the first appellate authority; and declare the interpretation of such provisions for the future guidance of the appellant and all the litigants in general.
3. Pass such other or further orders in favour of the Appellant as may be deemed just, equitable, and proper in the facts and circumstances of the case, in the interest of natural justice;

It is further submitted that all relevant factual documents have been duly placed on record. In the interest of affording a fair and reasonable opportunity, it is also prayed that the matter may kindly be settled here itself in accordance with law and principles of natural justice.

The Appellant respectfully prays accordingly.

SD/-

APPELLANT

Through CA. C. K. GUPTA

VERIFICATION:

Verified on this 01-07-2025, that the contents of the above appeal petition are true to the best of my knowledge and belief and nothing material has been concealed therefrom.

SD/-

APPELLANT

KYC OF THE SUPPLIER

M/S. ABC & CO.

PROP. MR. ABC

PAN CARD HAVING PAN NO.....

AADHAR CARD HAVING NO.....

PHOTO OF THE SUPPLIER PREMISES.....

SIGN BY MR. ABC

FORM GST RFD-01

APPLICATION FOR GST REFUND

DATED: 02-01-2025

M/S. DELHI ENTERPRISES

NEW DELHI

REFUND APPLIED FOR RS. 22,50,000-

FORM GST RFD-02

**ACKNOWLEDGEMENT OF GST REFUND
APPLICATION.**

DATED: 13-01-2025

**M/S. DELHI ENTERPRISES
NEW DELHI**

**REFUND APPLICATION ACKNOWLEDGEMENT
FOR REFUND OF RS. 22,50,000-**

FORM GST RFD-06

FINAL REFUND SANCTION ORDER

DATED: 28-03-2025

M/S. DELHI ENTERPRISES

NEW DELHI

FOR REFUND OF RS. 22,50,000-

BRIEF SYNOPSIS:

IN THE GST TRIBUNAL, NEW DELHI BENCH
APPEAL NO..... OF 2025

IN THE MATTER OF:
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GSTIN No.... 1111111111

APPELLANT

VERSUS

JOINT COMMISSIONER (APPEALS)

ZONE IX, DGST DEPARTMENT

NEW DELHI

RESPONDENT

The question of law before this Hon'ble Tribunal is very crucial for the implementation of the Act as most of the orders on refund on file are passed by the officers who may be higher in rank than the first appellate authorities appointed or they may be of equal rank? If such a procedure is followed, then, the appellant respectfully says that this would lead to impossible situations and the very purpose of section 107 giving statutory right of appeal to the appellant may be negated by the authorities below?

MY LORD THIS APPEAL IS VERY CRUCIAL. TWO QUESTIONS ARISE BEFORE THIS HON'BLE COURT.

A. Withholding of refund by the proper officer.

B. Maintainability of appeal before the First Appellate authority.

1. The Appellant has applied for refund of Rs. 22,50,000- of unutilised ITC for zero rated supply for exports made out of India. **Export is not disputed. ITC is also not disputed.**
2. The RFD-01 was filed on 02-01-2025. RFD-02 was issued on 13-01-2025. Refund sanction order in RFD-06 must be issued within 60 days. But the proper officer issued RFD-06 on dated 28-03-2025 u/s 54(5) i.e. **delay of 26 days**. This is a gross violation of the GST laws. Some direction should be issued to the department by this hon`ble court.
3. Later, before the refund was to be credited to the bank account of appellant, the **department alleged** that there were some reports that were considered adverse by the commissioner and **Commissioner directed the proper officer to withhold the refund u/s 54(11) and order for withholding was issued by the proper officer without any reason and without any supporting documents.** Order was issued without giving opportunity of being heard. This is a gross **violation of principal of natural justice.**
4. These reports/documents were never made available nor confronted to us and nor our explanations sought on any of the issues raised by the Commissioner – this is against the settled principles of natural justice and makes the orders on file by the Commissioner patently illegal and unsustainable in law.

5. That the refund was withheld by the proper officer u/s 54(11).
This section is not applicable in our case. RFD-06 (final refund sanction order) was never subject matter of an appeal or further proceedings under this act or any other proceeding pending as on that date. After issue of RFD-06 the department cannot withhold the refund. It is without jurisdiction. The refund along with interest must be issued to the registered person immediately. I request the hon`ble court to impose some cost on the department for the harassment to the registered person.
6. The First Appellate Authority observed that this appeal against the orders of the commissioner, conveyed by the proper officer may not be maintainable. Hence, the appeal was dismissed. Section 107(1) states that any person aggrieved by **any order passed under this act by an adjudicating authority** may appeal to such appellate authority. Adjudicating authority has been defined in **Section 2(4) – means any authority, appointed or authorised to pass any order under this act**. Appeal against the order of the adjudicating authority lies before the first appellate authority. Hence the appeal to the first appellate authority is **legally maintainable as per the law**.
7. Hence the allegation of the department is not valid and the order of the first appellate authority is liable to be set aside.