



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 NO. : 20210264SW0000015824

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/21/2020-APPEAL/521

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-JC-05/20-21**

दिनांक Date : **29-01-2021** जारी करने की तारीख Date of Issue : 17-02-2021

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathore, Joint.Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZO2405200028116** दिनांक: **05.05.2020** issued by Assistant Commissioner, Central GST, Division-Kadi, Gandhinagar Commissionerate

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

M/s Supernova Engineers Limitd,
1470/1 1469/1, Rajpur, Kadi,
Mehsana, Gujarat-382715

(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) 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 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-APPEAL

This appeal has been filed by M/s Supernova Engineers Limitd, 1470/1 1469/1, Rajpur, Kadi, Mehsana, Gujarat-382715 [hereinafter referred to as 'the appellant'] against RFD-06 Order No. ZO2405200028116 dated 05-05-2020 [hereinafter referred to as 'impugned order'] passed by the Assistant Commissioner of CGST, Division-Kadi, Commissionerate-Gandhinagar [hereinafter referred to as 'adjudicating authority'].

2. Facts of the case, in brief, are that the appellant is registered under the Central Goods and Service Tax Act, 2017 vide GST registration number 24AACCS6758G1Z7. The appellant is engaged in the business genset manufacturer and supplier. The appellant has applied a refund of amounting to Rs. 17,50,227/- on 02.05.2020 before the adjudicating authority, under Section 54 of CGST Act, 2017, on account of Supplies to SEZ unit/SEZ Developer without payment of integrated tax for February-2018. The adjudicating authority vide impugned orders rejected the refund claims on the grounds that *"Supply to SEZ invoice is of date 03.02.2018 and period is Feb, 2018 so the refund is rejected as per Section 54(2) of CGST Act, 2017 as the refund application is time barred"*.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the following grounds:

- a. The refund is filed within time, the adjudicating authority had arbitrarily rejected the refund application unlawfully;
- b. While filing the refund on account of supplies made to SEZ unit/SEZ developer (Without payment of tax) through RFD-01, invoice wise details are required to upload and the same has been validating with GSTR-1. The due date of filing GSTR-1 for the month of February-2018 is extended to 31st October 2018 through Notification No. 44/2018-CT dated 10.09.2018

[2]



- c. As per the relevant date, the due date to file refund will be 2 years from the end of the financial year;
- d. CBIC has extended time limit for completion or compliance of any action which falls during the period from 20.03.2020 to 29.06.2020 to 30.06.2020 through Notification No. 35/2020-CT dated 03.04.2020

4. Virtual Hearing in the case was fixed on 20.01.2021. Shri Bishan R. Shah, Chartered Accountant appeared before me for personal hearing through video conferencing mode on behalf of the appellant in appeal no. GAPPL/21/2020-APPEAL. He has submitted his written submission on dated 14-08-2020 and reiterated the same at the time of personal hearing. Further, he requested to set-aside the order passed by the adjudicating authority.

5. The appellant has relied on various case laws mentioned in their submissions.

6. I have carefully gone through the facts of the case on record, grounds of appeal and the submissions made by the appellant. The issue to be decided here is whether the appellant has filed the application for refund before the expiry of two years from the relevant date. The relevant extract is reproduced verbatim:

Section 54 – Refund of tax

*(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application **before the expiry of two years from the relevant date** in such form and manner as may be prescribed:*

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

(2) -----



(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilized input tax credit at the end of any tax period:

Provided that no refund of unutilized input tax credit shall be allowed in cases other than-

(i) Zero rated supplies made without payment of tax

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies

Explanation: For the purposes of this section,-

(1) -----

(2) "relevant date" means—

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(i) -----

(ii) -----

(iii) -----

(b) -----

(c) -----

(i) -----

(ii) -----



- (d) -----
- (e) *in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;*
- (f) -----
- (g) -----
- (h) *in any other case, the date of payment of tax.*

7. The above section clearly deals with the refund of unutilized input tax credit in case where the credit has accumulated on account of Supplies to SEZ unit/SEZ Developer without payment of integrated tax. As regard the contention of the appellant that the due date to file refund will be 31st March 2020 i.e. the 2 years from the end of the financial year, it is observed that explanation 2(e) had been substituted w.e.f. 01.02.2019 in terms of the Notification 02/2019-Central Tax dated 29.01.2019 followed by Gazette issued on 29.08.2018 in respect of The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018). Hence the ground raised by the appellant in respect of relevant date are not accepted as the same are not proper and legal. Further I find that the appellant has not submitted with appeal papers the copy of refund application and other relevant documents so as to determine the relevant date. Further I find that new explanation 2(e) will be applicable in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3) of Section 54 of CGST Act, 2017. Hence, the said explanation is not relevant to this case.

8. Further, I find that the appellant can make an application before the expiry of two years from the relevant date. I find that the refund application was filed by the appellant on 02.05.2020 which is time barred. Further, I find that the appellant came with the plea that on account of pandemic COVID-19, the time limit was extended from the 20th day of March, 2020 to the 29th day of June, 2020 upto 30th day of June, 2020 vide Notification No. 35/2020 -



Central Tax dated 03-04-2020. However I find that the adjudication authority has given opportunity for submission of documents through personal hearing in support of their claim in respect of time limit. However they have neither submitted any documents nor attended personal hearing as called by the adjudicating authority. The adjudicating authority has therefore rightly decided the matter based on record which were available with him. Further the appellant has not submitted sufficient document to prove that the claim was filed within time limit prescribed. Further I find that the ground raised by the appellant in respect of relevant date are not proper and legal hence it would not be relevant to go into merit of the time limit according to Notification No. 35/2020 –Central Tax dated 03-04-2020. Therefore, the decision of the adjudicating authority is proper & as per law.

9. In view of the above, I do not find any force in the contentions of the appellant in respect of relevant date. Accordingly, I find that the impugned order passed by the adjudicating authority is correct as per the provisions of GST law.

10. Accordingly, I do not find any reason to interfere with the decision taken by the adjudicating authority vide “impugned order”. In view of above discussion, I reject the appeal filed by the appellant.

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

The appeal filed by the appellant stand disposed off in above terms.

मुकेश राठौर
29/01/2021

(मुकेश राठौर)

संयुक्त आयुक्त(अपील्स)

Date : 29-01-2021



Attested

M.P. Sisodiya

(M.P.Sisodiya)
Superintendent (Appeals)
CGST, Ahmedabad.
By R.P.A.D.

To,

M/s Supernova Engineers Limitd,
1470/1 1469/1, Rajpur, Kadi,
Mehsana, Gujarat-382715

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner(Appeals), CGST, Ahmedabad
3. The Commissioner, Central Tax, Gandhinagar Commissionerate.
4. The Assistant Commissioner CGST, Div-Kadi, Gandhinagar Commissionerate..
5. The Assistant Commissioner, System, Central Tax, Gandhinagar Commissionerate..
6. Guard File.
7. P.A.



