



सत्यमेव जयते

आयुक्त(अपील)काकार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN NO. : 20220364SW000000D486

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1004/2022 / 7059-62

ख अपील-आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-54/2021-22**
दिनांक Date : **28-03-2022** जारी करने की तारीख Date of Issue : 29-03-2022

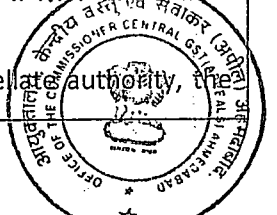
श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZQ2402210076381** dated **05.02.2021** issued by Assistant Commissioner, Central Goods and Service Tax, Division Kalol, Gandhinagar Commissionerate

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

M/s Innovision Systems and Devices Pvt Ltd
Plot No. 1143, Opposite GEB Sub-station,
Chhatral, Kadi, Gandhinagar, 24-382729

(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, appellant may refer to the website www.cbic.gov.in .



ORDER-IN- APPEAL

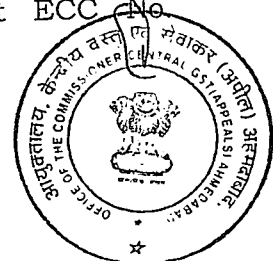
This appeal has been filed under Section 107 of the Central Goods and Service Tax Act, 2017 (hereinafter also referred to as “ the Act”) by M/s. Innovisions Systems and Divices Pvt. Ltd., Plot No. 1143, Opposite GEB Sub-Station, Chhatral, Kadi 382729 (hereinafter also referred to as “ the appellant “) against the Order-in – Original No. ZQ2402210076381 dated 05.02.2021 (hereinafter as “the impugned order”) passed by the Assistant Commissioner, Central Goods & Service Tax, Division-Kalol , Ahmedabad- South (hereinafter called as “the adjudicating authority).

Sr. No.	Appeal No.	Order in Original No. & date(Impugned order)	Period of dispute	Order rejecting amount
1	2	3	4	5
1	GAPPL/ADC/GSTP /1004/2021- APPEAL	ZQ240221007 6381 dated 05.02.2021	March 2017	Rs. 8,24,548/-

2. BRIEF FACTS OF THE CASE

2.1 The appellant is engaged in manufacture and supply of goods Electronics Control Panel Assemblies, Electrical Controls Panel Assemblies, Textiles Machines Parts etc. The Appellant are registered under the provisions of GST having registration No. 24AABCI4605B1ZA. Prior to introduction of GST, the Appellant was also registered under the erstwhile Central Excise Act, 1944. Till March 2011, the Appellant were holding two Central Excise Registration, one at Plot No. 1143, Chhatral- Kadi Road, Opp. GEB Sub-Station, Chhatral, Taluka-Kalol having Registration No. AABCI4605BEM003 and other at E-235, GIDC Electronics Estate, Sector-26, Gandhinagar, having Registration No. AABCI4605BEM001. The appellant had surrendered Registration No. AABCI4605BEM001.

2.2. The appellant had paid Rs. 32,00,000/- towards their Central Excise duty liability in ER-1 for the month of March -2017. The said payment was made in ECC Code No. AABCI4605BEM001 vide Challan dated 31.03.2017. During the scrutiny of the records of the appellant by the Jurisdiction range superintendent it was noticed that the payment details of Rs. 32,00,000/- excise duty paid does not exist in data base of ECC No. AABCI4605BEM003. On the instruction of the Jurisdictional range superintendent the appellant deposited the sun of Rs. 32,00,000/- again vide Challan having CIN No. 02005291812201800006 dated 18.12.2018 against ECC No. AABCI4605BEM003 for the month of March, 2017.



2.3 Further, the jurisdictional range superintendent had written a letter to the appellant requesting them that the interest on late payment of duty has not been paid. The appellant had also paid the interest to the tune of Rs. 8,24,548/- towards the late payment.

2.4 Further, the appellant had filed the refund application for Rs. 32,00,000/- paid erroneously in inactive ECC No. AABCI4605BEM001. The adjudication authority sectioned the refund claim vide OIO No. OIO/04/Ref/STAX/NK/2019-20 dated 31.05.2019.

2.5 The appellant had further filed refund claim for interest of Rs. 8,24,548/- and filed GST RFD-01 vide ARN No. AA241120071966C dated 27.11.2020. The adjudicating authority vide order reference No. ZQ24022100763381 dated 05.02.2021 rejected the refund claim being time barred.

3.00 Being aggrieved with the order dated 05.02.2021 the appellant has filed this appeal.

3. Personal Hearing

Personal hearing in virtual mode through video conference was held on 07.01.2022. Shri Ambaish Pandey, authorized Representative on behalf of the appellant has attended the personal hearing. They have requested to allow 07 days them for filing additional reply which was allowed.

4. The appellant vide letter dated 13.01.2022 submitted the submission as below:-

4.1 The present appeal has rightly been preferred before Additional Commissioner (Appeals), CGST & CE, Ahmedabad as the Impugned Order has been passed in Form GST RFD-06.

4.2 In the present case, the Appellant had earlier filed a refund application on 06.03.2019 for refund of Rs. 32,00,000/- paid erroneously as excise duty in wrong registration in March, 2017; prior to filing such refund application, the appellant had deposited an amount of Rs. 32,00,000/-, on 18.12.2018 towards excise liability of their unit having Reg. No. AABCI4605BEM003 for the month of March 2017, which was informed to the department vide letter dated 26.12.2018.

4.3 The adjudicating authority vide order dated 31.05.2019, adjudicated the refund claim dated 06.03.2019 filed by the Appellant for the amount of Rs. 32,00,000/- sanctioning the same to the Appellants. Pursuant to the above, the Appellants filed the refund claim in Form GST-RFD-01 bearing Reference No. AA241120071966C refund of Rs. 8,24,548/- being amount paid in Form DRC-03 as interest on alleged delayed payment of Central Excise duty, *inter-alia*, on the ground that there was no requirement of paying an amount of Rs. 32,00,000/- again merely because the Appellants inadvertently made the payment in wrong Registration /ECC.

4.4 Further the appellant has been issued a show cause notice proposing to reject their refund application on the ground of it being time-barred; the adjudication



authority vide order dated 05.02.2021 in Form GST RFD-06 rejected the refund application of the appellants.

4.5 The appellant further submitted that since the Impugned Order dated 05.02.2021 was passed in Form RFD-06 under Rule 92 of CGST Rules, 2017 and amount in respect of which the refund claim has been filed was paid through GST portal in April 2019 by the Appellants i.e. after the introduction of GST regime, the present appeal has been rightly filed before the Additional Commissioner(Appeals), CGST & CE, Ahmedabad in terms of provisions of CGST Act, 2017.

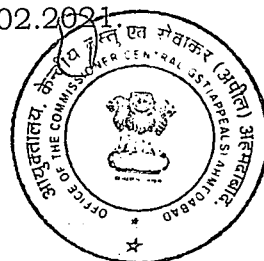
4.6 The appellant further submitted that Section 11B of the Central Excise Act, 1944 will not be applicable in the facts of the present case, as the amount is in the nature of deposit and not duty. Retention of any amount which was not payable violets Article 265 of the Constitution of India.

4.7 The appellant relied upon the judgment of Hon'ble High Court of Gujarat in the case of Joshi Technologies International vs. Union of India, 2016 (339) ELT 0021 (Guj.), wherein it was held that Revenue Department is duty bound to refund the amount paid by mistake in the nature of deposit and does not partake the character of duty ;thus, the time limit prescribed under Section 11B of Central Excise Act, 1944 shall not be applicable. The appellant also relied upon the judgment of Hon'ble CESTAT in case of Petronet LNG Ltd. vs Commissioner of Custsoms, 2019 (369) 791 (Tri-Ahmd.)

Discussions and Findings

6. I have gone through the facts of the case and written submissions made by the appellant in their appeal memo as well as oral submission at the time of personal hearing and accordingly, I proceeded for deciding the appeal.

7. I find that the during the course of scrutiny of the ER-1 for the Month of March 2017 by the Jurisdictional Range Superintendent it was found that the payment details of Rs. 32,00,000/- excise duty paid does not exists in data base of ECC No. AABCI4605BXM003. After instructions from range superintendent the appellant had realized that they have paid erroneously inactive ECC No. AABCI4605BXM001. The appellant has made the payment the sum of Rs. 32,00,000/- in ECC No. AABCI4605BXM003. Further, on instructions from jurisdictional rage superintendent, the appellant have also paid Interest to the tune of Rs. 8,24,548/- vide Challan No. 19042400093871 dated 10.04.2019 for late payment of excise duty. I find that the appellant had filed refund claim for Rs. 32,00,000/- wrongly paid in ECC No. AABCI4605BXM001 under Central Excise provisions and same was adjudicated by the adjudicating authority order in appeal No. OIO/04/Ref/STAX/NK/2019-20 dated 31.05.2019 granted the refund. Further, the appellant had filed refund claim on the ground that the amount of Rs. 8,24,548/- can not retain without any authority of law. I find that the refund claim was rejected by the adjudicating authority being time barred vide RFD-06 Order No. ZQ2402210076381 dated 05.02.2021

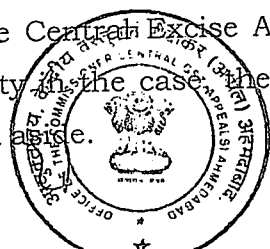


8. In the present case, I find that the issue under dispute pertains to interest paid by the appellant on their central excise duty liability of the pre-GST period. The appellant preferred a claim of refund of the said interest amount paid on the ground that they were not liable to pay the same. Since the said amount of interest was paid in GST period, the same was paid by the appellant way of debit in their electronic cash ledger by DRC-03. Therefore, the appellant claimed the refund of the said amount under the provisions of GST by filing RFD-01. The adjudicating authority has rejected the said refund claim on the ground of limitation as the refund claim was filed after the stipulated of one year from the date of payment, as provided under the provisions of Section 11B of the Central Excise Act, 1944.

8.1 In this regard, I find that as per provisions of Section 142(3) of CGST Act, 2017, every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944). Therefore, it is quite apparent that the claim of refund under dispute in the case should have been preferred and disposed off under the provisions of existing law viz. Central Excise Act, 1944. The Central Board of Indirect Taxes and Customs (CBIC), New Delhi has clarified this aspect vide their Circular No. 37/11/2018-GST dt. 15.03.2018, the relevant para of which reads as under:

10. Refund of taxes paid under existing laws: Sub-sections (3), (4) and (5) of section 142 of the CGST Act provide that refunds of tax/duty paid under the existing law shall be disposed of in accordance with the provisions of the existing law. It is observed that certain taxpayers have applied for such refund claims in FORM GST RFD-01A also. In this regard, the field formations are advised to reject such applications and pass a rejection order in FORM GST PMT-03 and communicate the same on the common portal in FORM GST RFD-01B. The procedures laid down under the existing laws viz., Central Excise Act, 1944 and Chapter V of the Finance Act, 1994 read with above referred sub-sections of section 142 of the CGST Act shall be followed while processing such refund claims.

In the facts of the case, it is seen that both the appellant and adjudicating authority have not followed the correct provisions of law. Though the appellant has inadvertently made claim for refund wrongly, nothing should have stopped the adjudicating authority to guide the appellant properly as he was very well aware that the refund claims preferred does not fall under the ambit of GST Law but was under the existing law. That being the case, it was not legally correct on part of the adjudicating authority to decide the case under GST Law by applying the limitation provisions of the existing law viz. Section 11B of the Central Excise Act, 1944. The impugned order passed by the adjudicating authority in the case therefore, suffers from legal infirmity to that extent and it is liable to set aside.

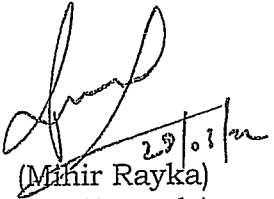


Notwithsgtanding the above, the present appeal pertaining to an issue falling under the purview of existing law Viz. Central Excise Act, 194, does not fall under the jurisdiction of the appellate authority constituted under the provisions of CGST Act, 2017.

In view of the facts discussed above, I hold that the adjudicating authority has wrongly rejected the refund claim filed under Section 54 of CGST Act, 2017 by invoking time limitation prescribed under Section 11B of erstwhile Central Excise Act, 1944. Therefore I hold that impugned order passed by the adjudicating authority is not legal and proper and deserve to be set aside. I further Order that any claim of refund filed in consequent to this Order may be dealt with in accordance with provisions of erstwhile Central Excise Act, 1944 and Rules made thereunder after following the principles of natural justice. Accordingly I set aside the impugned order and allow the appeal filed by the appellant.

9. अपीलकर्ताद्वारा दर्ज की गई अपील कानिपटारा उपरोक्त तरीके से किया जाता है।

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


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: .03.2022



Attested



(H. S. Meena)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,

M/s. Innovisions Systems and Divices Pvt. Ltd.,
Plot No. 1143, Opposite GEB Sub-Station,
Chhatral, Kadi 382729

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Commissionerate- Gandhinagar
4. The Assistant Commissioner, CGST & C.Ex, Division-Kalol, Gandhinagar Commissionerate-
5. The Additional Commissioner, Central Tax (System), Gandhinagar Commissionerate -.
6. Guard File.
7. P.A. File