



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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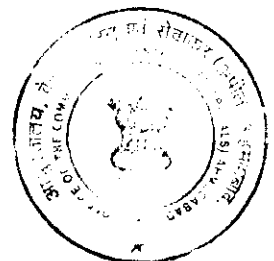
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रजिस्टर्ड डाक ए.डी. द्वारा

(DIN:-20210764SW0000515186)

- क फाइल संख्या : File No : GAPPL/ADC/GSTP/20/2021 /2278 To 2282
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-ADC-006/21-22
दिनांक Date 12-07-2021 जारी करने की तारीख Date of Issue 19-07-2021
- श्री मोहित अग्रवाल, अपर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Mohit Agrawal, Additionl Commissioner (Appeals)
- ॥ Arising out of Order-in-Original No. 15/Meh/Final/Ref/2019-20 दिनांक: 22.04.2019 issued by Assistant Commissioner, Central GST, Division-Mehsana, Gandhinagar
- ९ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s . Navdurga Oil Industries, Pivai Char Rasta, Pivai, Vijapur-382870.

(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-APPEAL

M/s. Navdurga Oil Industries, Pivai Char Rasta, Pivai, Vijapur-382870, Gujarat, (*hereinafter referred as 'appellant'*) has filed the present appeal against the Sanction Order No.15/Meh/Final/Ref/2019-20 dated 22.04.2019 under Form RFD-06 (*hereinafter referred as 'impugned order'*) rejecting CGST and SGST refund of Rs.4,41,565/- each, passed by the Assistant Commissioner of CGST & Central Excise, Mehsana Division, Gandhinagar Comm'rte (*hereinafter referred as 'adjudicating authority'*).

2(i). The facts of the cases, in brief, are that the appellant is holding GST Registration No.24AAGFN8195F1Z1. On 14.02.2019, the appellant filed a Refund claim of CGST and SGST amounting Rs.4,41,565/- each, on account of excess payment of GST vide ARN No.AC240717031529Y. A Deficiency Memo in Form RFD-03 issued to them on 27.02.2019 for certain discrepancies. The appellant submitted their reply on 20.03.2019.

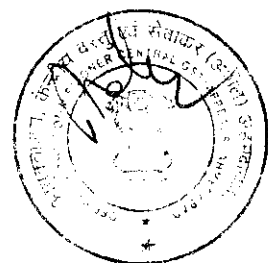
2(ii). Subsequently, a Show Cause Notice (*hereinafter referred as 'SCN'*) dated 29.03.2019, under Form RFD-08 was issued to the appellant proposing rejection of refund and for filing of reply to the said SCN. Opportunities of personal hearing were also granted to the appellant on 12.04.2019, 15.04.2019 and on 16.04.2019. But the appellant did not attend the personal hearing. They filed the reply on 18.04.2019 stating that they have claimed refund as per Section 89(2) of Chapter No.10 of CGST Rules. The adjudicating authority, vide the impugned order, rejected the refund claim.

2(iii). The appellant preferred an appeal on 21.12.2020 against the said impugned order under which they submitted that

- (a) *in the month of July-2017 they paid excess amount of Rs.4,41,565/- towards CGST and Rs.4,41,565/- towards SGST;*
- (b) *in bill no.ND10 dated 13.07.2017 Kandla Agro and Chemicals Pvt. Ltd., taxable amount was 19,62,250/- involving CGST Rs.49,056/- and SGST Rs.49,056/- but during the GSTR 3B filing the bill amount was entered wrongly resulting into excess payment whereas in GSTR1 the bill amount was shown with right value.*

3. Personal hearing in the case was held on 10.06.2021 in virtual mode. Shri Hardikkumar M. Patel, (GSTPS), attended the hearing for the appellant. He reiterated the submissions made in appeal memorandum and requested to consider their appeal.

4(i). I have carefully gone through the facts of the case available on records, submissions made by the appellant in the Appeal Memorandum as well as at the time of personal hearing. I find that the appellant in their Appeal Memorandum has shown the date



of communication of order appealed against as 22.04.2019 whereas the appeal has been filed on 21.12.2020 i.e. after almost over 1 years and 8 months.

4(ii). Relevant part of Section 107 of CGST Act, 2017 reads as under :

"107. Appeals to Appellate Authority.— (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

[Emphasis supplied]

4(iii). Further, Rule 108 of CGST Rules, 2017 reads as under :

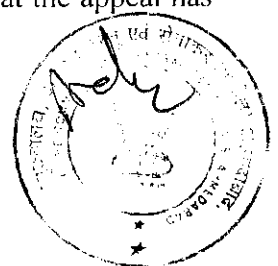
"108. Appeal to the Appellate Authority.- (1) An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in FORM GST APL-01, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.

(2) The grounds of appeal and the form of verification as contained in FORM GST APL-01 shall be signed in the manner specified in rule 26.

(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1)..."

[Emphasis supplied]

4(iv). The conjoint reading of the above provisions of law make it clear that an appeal is required to be filed within 3 month by the appellant and the Appellate Authority is empowered to condone the delay of one month, only if sufficient cause for delay appears to be genuine. The appellant has not submitted any cogent ground for such inordinate delay of 1 year and 8 months in filing the appeal. There was also no submission on this aspect even during the course of personal hearing. Moreover, the Appellate Authority can condone the delay of one month only. In the present matter, the appeal was required to be filed by 21.07.2019 (within three months) from the date of communication of impugned order i.e. 22.04.2019 as claimed by the appellant. The appellant could have filed the appeal by 21.08.2019 (further period of one month) by explaining the delay. I find that the appeal has



been filed on 21.12.2020 which is 1 year and 4 months beyond the period prescribed under the law. Such a delay is beyond the power of Appellate Authority to condone or consider.

5. The appellant has submitted in their appeal memorandum that the impugned order was not received online though admitted that they received it manually. The Rule 108 of CGST Rules, 2017 mandates the appellant to file the appeal electronically or otherwise and also mandates to submit the copy of the decision or order appealed against within 7 days of filing of appeal. The said Rule nowhere states that it should be filed only online and not manually. Thus, the appellant could have filed the appeal manually, if they had received the impugned order manually. Thus, the reason putforth by the appellant for such inordinate delay of 1 year and 4 months is also not acceptable.

6. In view of above, the appeal of the appellant is dismissed as time-barred and disposed of accordingly.

Mohit Agrawal
07/7/21

(Mohit Agrawal)

Additional Commissioner (Appeals)

Date : 07.2021.

Attested

Jitendra Dave
19/07/21

(Jitendra Dave)
Superintendent (Appeal)
CGST, Ahmedabad.



BY R.P.A.D. / SPEED POST TO :

M/s. Navdurga Oil Industries,
Pivai Char Rasta, Pivai,
Vijapur-382870 (Gujarat).

Copy to :-

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Principal Commissioner/Commissioner, CGST & Central Excise, Gandhinagar Comm'rate.
3. The Addl./Jt. Commissioner, (Systems), CGST & Cen. Excise, Gandhinagar Comm'rate.
4. The Dy./Asstt. Commissioner, CGST & Cen. Excise, Mehsana Divn, Gandhinagar Comm'rate.
- ✓ 5. Guard File.
6. P.A. File.