



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. : 20220864SW000000AF84

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2325/2021

13222 - 5277

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-49/2022-23**
दिनांक Date : **24-08-2022** जारी करने की तारीख Date of Issue : 26-08-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZS2408210414154** dated **31.08.2021** 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 Royal Surgicare Pvt Ltd
Plot No. 832, Near Ganesh Rubber,
Prima Automization Lane, Santej,
Kalol, Gandhinagar, Gujarat - 382721

(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 अपीलार्थी 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**Brief Facts of the Case:**

M/s. Royal Surgicare Pvt. Ltd. Plot No. 832, Nr. Ganesh Rubber, Prima Atomization Lane, Santej, Kalol, Gandhinagar-382721 (hereinafter referred as 'appellant') has filed the present appeal against Order No. ZS2408210414154 dated 31.08.2021, passed in the Form -GST-RFD-06 (hereinafter referred as 'impugned order') rejecting refund claim of Rs. 13,03,168/- issued by the Assistant Commissioner, CGST, Division, Kalol, Gandhinagar Commissionerate (hereinafter referred as 'adjudicating authority').

2 (i) Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration having GSTIN 24AADCR3670H1ZG has filed present appeal on 28.10.2021. The 'Appellant' had filed refund application on 17.07.2021 for refund of Rs. 13,03,168/- for the tax period of April' 2019 to March'2020 on account of refund on account of ITC accumulated due to Inverted Tax Structure. In response to said refund claim a Show Cause Notice dated 16.08.2021 was issued to the 'appellant' citing the reason "Wrong ITC Claim" and a Remark was also mentioned as "Refund for the period from April to May 2019 rejected being time bar under section 54 of CGST Act 2017. Eligible NET ITC in this case is only 6461518 instead of 9195957, therefore, as per calculation under rule 89 Rs. 1303168 is liable for rejection."

2(ii) Further, the 'Appellant' was asked to furnish reply to the SCN within 15 days from the date of service of SCN and a personal hearing was also offered to 'Appellant' on 19.08.2021." After considering the reply the adjudicating authority has rejected the refund claim vide impugned order as "I hereby sanction an amount of INR 1378320 to M/s. Royal Surgicare Private Limited having GSTIN 24AADCR3670H1ZG under sub-section (5) of section 54) of the Act/under Section 56 of the Act" and a remark was also mentioned as "April and May claim are time barred. Capital goods ITC not eligible. Sanctioned as per SCN."

2(iii) Being aggrieved with the impugned order the appellant has filed the present appeal in 28.10.2021 wherein stated that-

- The appellant have applied the refund on account of ITC accumulated due to Inverted Tax Structure for financial year 2019-20 in the month of July - 2021. The Application has been partially rejected for the month of April & May on the grounds that it has been time barred.
- As per recent judgment of Supreme Court dated 23-September 2021 there is period of limitation has been given and according to that they can still eligible for the refund of the said period.
- The reason for being late for the refund process was that all the directors of the company had corona and company is being closed during the Month of



March to April'2021. After that they have made the application for refund however the same has been rejected by giving the reason of time barred.

- The appellant has submitted that they did not take credit capital goods.

3. Personal Hearing in the matter was through virtual mode held on 20.07.2022 wherein Shri Kalrav Patel CA appeared on behalf of the 'Appellant' as authorized representative. During the P.H. he has reiterated the submissions made till date and informed that they want to give additional submission /information, which was approved and 7 working days period was granted.

Accordingly, the appellant has submitted the additional written submission dated 22.07.2022 wherein they referred the Notification 13/2022-Central Tax issued by CBIC clarifying the period of 01-March -2020 to 28th Feb-2022 to be excluded for the purpose of time limit for application of the refund. Considering the above Notification the appellant has stated that order of rejection of refund claim on the ground of time barred is not legal.

Discussions and findings:

4(i) I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum as well as additional written submissions. I find that the 'Appellant' had preferred the refund claim on account of "*Refund on account of ITC accumulated due to Inverted Tax Structure.*" for the amount of Rs. 13, 03,168/-. In response to the said refund application Show Cause Notice was issued to them proposing rejection of refund claims for reasons mentioned as "*Wrong ITC Claim*" and "*Refund for the period from April to May 2019 rejected being time bar under section 54 of CGST Act 2017. Eligible NET ITC in this case is only 6461518 instead of 9195957, therefore, as per calculation under rule 89 Rs. 1303168 is liable for rejection.*"

4(ii) I find that in this case the appellant had filed refund claims for the amount of Rs. 26,81,488/-. Out of Rs. 26, 81,488/- Rs. 13, 03,168/- has been rejected by the *adjudicating* authority. From the FORM-GST-RFD-06 dated 31.08.2021 it is observed that refund claim to the tune of Rs. 13,03,168/- has been disallowed due to the reason that "*ITC claim content ITC of capital goods in case inverted Duty Structure case of application of refund due to Inverted Duty Structure*". Further, in remarks portion of RFD-06 it has been stated that "*April and May 2019 claim are time barred. Capital goods ITC not eligible. Sanctioned as per SCN.*" Further, I find that in RFD-08 the reason of inadmissibility of Refund claim was "*Wrong ITC of Claim*". I also find that in the Remarks of RFD-08 it has been mentioned by the *adjudicating* authority that "*Refund for the period from April to May 2019 rejected being time bar under section 54 of CGST Act 2017. Eligible NET ITC in this case is only 6461518 instead of 9195957, therefore, as per calculation under rule 89 Rs. 1303168 is liable for rejection.*" I find that the *adjudicating* authority has issued SCN for the reason of time barred of refund claim



for the period of April'2019 & May'2019 and availment the credit of capital goods.

I find that as far as the availing of ITC of capital goods, the appellant has submitted that they have not taken the credit of capital goods. I am not verifying the credit of capital goods taken by appellant. It needs to be checked by the adjudicating authority. I find that reason for the reject of the refund claim was on time limitation ground. From the facts of the case I find that the refund claim for the period April'2019 and May 2019 has been filed on 17.07.2021 is beyond two years from the relevant date prescribed under explanation (2) to Section 54 of the CGST Act, 2017 and hence beyond time limit prescribed under Section 54(1) of the CGST Act, 2017. In their reply to Show Cause Notice the Appellant relied upon order of Hon'ble Supreme Court in Misc. Application No. 665/2021 in SWM(C) No. 3/2020. I find that Hon'ble Supreme Court vide Order dated 23.09.2021 ordered that for computing the period of limitation for any suit, appeal, application or proceeding the period from 15.03.2020 till 02.10.2021 shall stand excluded and consequently balance period of limitation remaining as on 15.03.2020 if any, shall become available with effect from 03.10.2021 and that in cases where the limitation period would have expired during period from 15.03.2020 till 02.10.2021 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. Subsequently, Hon'ble Supreme Court vide order dated 10.01.2022 order that in continuation of order dated 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi – judicial proceedings.

4(iii). *Further, I find that the appellant in the present appeal has referred Notification No. 13/2022-Central Tax dated 05.07.2022 issued by the CBIC. The relevant para is reproduced as under:*

(iii) excludes the period from 1st day of March, 2020 to the 28th day of February 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.

2. This notification shall be deemed to have come into force with effect from the 1st day of March, 2020.

In view of above, I find that in the present matter the claim was filed for the period April'2019 and May'2019 on 17.07.2021, accordingly, following the order of Hon'ble Supreme Court in MA 665/2021 in SMW(C) No. 3/2020 as well as in the light of Notification No. 13/2022- Central Tax dated 05.07.2022, I hold that the refund claim for April'2019 and May'2019 filed on 17.07.2021 is not hit by time limitation prescribed under Section 54 of CGST Act, 2017. Hence, the refund claim filed by the appellant succeeds on time limitation ground. Needless to say, since the appellant has contended that they have not availed capital goods credit and as the claim was rejected on time limit ground, the admissibility of refund on merit is not examined in this proceeding. Therefore, any claim of refund filed in

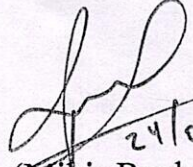


consequences to this Order may be examined by the appropriate authority for its admissibility on merit in accordance with Section 54 of the CGST Act, 2017 and Rules made there under.

5. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, allow the appeal of the "*Appellant*".

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

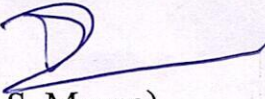
6 The appeal filed by the '*Appellant*' stand disposed off in above terms.


24/08/22
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: .08.2022

Attested


(H. S. Meena)
Superintendent
Central Tax (Appeals)
Ahmedabad
By R.P.A.D.



To,

M/s. Royal surgicare Pvt. Ltd.
Plot No. 832, Nr. Ganesh Rubber,
Prima Atomization Lane, Santej, Kalol,
Gandhinagar-382721

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- Ahmedabad – 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 Fil

