



आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.  
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
Phone: 079-26305065 Fax: 079-26305136  
E-Mail : commrappl1-cexamd@nic.in

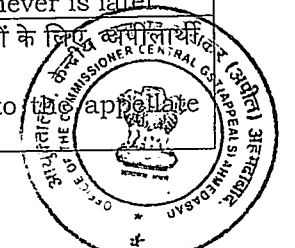


**By Regd. Post**

DIN NO. : 20221064SW000000DAC9

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/831/2021-APPEAL / 1273-80
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-003-APP-ADC-57/2022-23
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, संयुक्त आयुक्त अपील Shri Mihir Rayka, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	31.10.2022
(ङ)	Arising out of Order-in-Original No. ZU2411200249412 dated 20.11.2020 issued by Assistant Commissioner of CGST, Division-Kadi, Gandhinagar Commissionerate and SCA No. 19196 of 2021	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Supernova Engineers Limited, (GSTIN - 24ACCS6758G1Z7) Address : F-2, 1 <sup>st</sup> Floor, Sapath Hexa, Opp. Gujarat High Court, S G Highway, Ahmedabd - 380 060

(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 अपीलकर्ता को विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the authority, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



ORDER-IN-APPEAL**BRIEF FACTS OF THE CASE:**

This appeal has been filed by M/s. Supernova Engineers Limited, F-2, 1<sup>st</sup> Floor, Sapath Hexa, Opp. Gujarat High Court, S G Highway, Ahmedabd – 380 060 [hereinafter referred to as “the appellant”] against RFD-06 Order No. ZU2411200249412 dated 20-11-2020 [hereinafter referred to as “impugned order”] passed by the Assistant Commissioner of CGST, Division-Kadi, Gandhinagar Commissionerate [hereinafter referred to the “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 of genset manufacturer and supplier. The appellant has applied a refund amounting to Rs. 10,53,000/- on 30.10.2020 before the adjudicating authority, under Section 54 of CGST Act, 2017, on account of Supplies to SEZ unit / SEZ Developer with payment of Integrated Tax for January-2020. The adjudicating authority vide impugned order rejected the refund claim being ineligible on the ground that the appellant had charged IGST on the invoice No. 874 and 875 both dated 28.01.2020 and amount of IGST charged on the supply had not been added to the taxable amount and endorsement of Specified officer of SEX is not on the front side so the appellant is not eligible to file the refund claim under the refund type “Supply with payment of tax”.

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

a. The appellant are eligible to file refund claim under Section 16 of the IGST Act, 2017 read with Section 54 of the CGST Act, 2017 and rules made thereunder;

b. Assessee cannot be deprived of the substantial benefit on account of technical errors.

c. It is submitted that he refund claim of Rs. 10,53,000/- filed under the category of “Refund on account of supplied to SEZ unit with payment of tax” to the extent of zero rated supplies, as per Section 16 of the IGST Act, 2017, is correct and proper and thus, the impugned order rejecting the said claim is liable to be set aside.



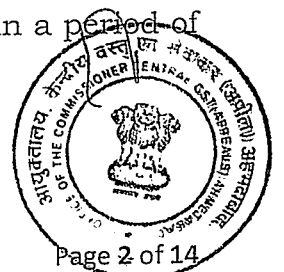
4. Further, the appellate authority passed the order vide O-I-A No. AHM-CGST-003-APP-ADC-007/21-22 dated 20.07.2021 [hereinafter referred as 'impugned appellate order'] by rejecting the appeal on time limitation factor, without discussing the merits of the case being time barred, the extract is reproduced as under :

"7. ....

*However, I find that as per Section 107(1) of CGST Act, 2017, any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act of the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal 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.** Further, I find that as per Section 107(4) of CGST Act, 2017 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 62 days 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 19.02.2021 (within three months) from the date of communication of impugned order i.e 20.11.2020 as claimed by the appellant. The appellant could have filed the appeal by 19.03.2021 (further period of one month) by explaining the delay. I find that the appeal has been filed on 21.04.2021 which is 62 days beyond the period prescribed under the law. Such a delay is beyond the power of Appellate Authority to condone or consider. In view of the above, I find that the appellant has not filed the appeal within time limit as per Section 107(1) of CGST Act, 2017. Since, the appeal is barred by limitation; I do not find it appropriate to discuss the merits of the case matter being time barred.*

8. *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."*

5. Being aggrieved with the impugned appellate order, the appellant filed a Special Civil Application No. 19196 of 2021 in the H'ble High Court of Gujarat by challenging the Order-in-Appeal dated 12.07.2021. The H'ble High Court of Gujarat, has passed a judgement by quashing and setting aside the Order-In - Appeal No. AHM-CGST-003-APP-ADC-007/21-22 dated 12.07.2021 and remanded back the matter to the appellate authority to decide the appeal on merits after giving an opportunity of hearing to the appellant, with a direction to take cognizance for extension of limitation as per Supreme Court's Order dated 10<sup>th</sup> January, 2022 in Misc. Application No. 665 of 2021 in Suo Motu Writ Petition (Civil) NO.3 of 2020 and complete such exercise within a period of twelve weeks from the date of receipt of the order.



6. In view of the above, the appellant M/s Supernova Engineers Ltd., vide their letter 15.09.2022 (received on dated 16.9.2022 by this office) has communicated therewith a copy of Order passed by the H'ble High Court of Gujarat in SCA 19196 of 2021 and submitted that they had filed a writ petition before the H'ble High Court of Gujarat vide SCA No. 19196 of 2021 whereby the High Court of Gujarat quashed and set aside the impugned appellate order dated 12.07.2021 and remanded the matter back to the Appellate Authority to decide appeal on merits considering the appeal as filed within period of limitation after giving an opportunity of hearing to them. So, in view of the H'ble Gujarat High Court's order and H'ble SC's order, I have to decide whether the present appeal is filed within time limit as prescribed under Section 107 of the CGST Act, 2017 or not and the present appeal on merits.

7. I have gone through the facts of the case and the written submissions made by the appellant. Before deciding the matter, it is to be verified whether the appeal has been filed within the prescribed time-limit or not.

The relevant statutory provisions are reproduced as under:

**SECTION 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.

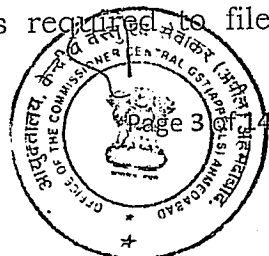
(2) .....

(3) .....

(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.**

7.1 I observed that in the instant case the appeal has been filed on 21<sup>st</sup> April 2021 against the RFD-06 Order No. ZU2411200249412. dated 20-11-2020 i.e by inordinate delay of 62 days from the normal period prescribed under Section 107(1) of the CGST Act, 2017. I find that though the delay in filing the appeal is condonable only for a further period of one month provided that the appellant was prevented by sufficient cause from presenting the appeal is shown and the delay of more than one month is not condonable under the provisions of sub section (4) of Section 107 of the Central Goods and Service Tax Act, 2017.

In view of above I observed that the Appellant was required to file



appeal within 3 months from the receipt of "the impugned order" i.e. on or before 19.02.2021, as stipulated under Section 107(1) of the Act. Further, I find that in terms of the provisions of Section 107(4) *ibid*, the appellate authority has powers to condone delay of one month in filing of appeal i.e. up to 19.03.2021, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown.

Further, I find that the appellant had not mentioned or submitted the Order passed by the H'ble SC on 10.02.2022 Miscellaneous Application No. 21 of 2022 in MA 665/2021, in SMW(C) No. 3 of 2020 during the personal hearing held on 8.6.2021 before the Appellate Authority. Therefore, the appellate authority has rejected the instant appeal on time limitation factor.

**7.2** Further, in the above context, I find that the Hon'ble Supreme Court has passed order on 10.01.2022 in matter of Miscellaneous Application No. 21 of 2022 in MA 665/2021, in SMW(C) No. 3 of 2020. The relevant para No. 5 (I) & 5 (III) of said order is reproduced as under:

5. *Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:*

I. *The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*

II. ....

III *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*

**7.3** Further, I also find that the CBIC, New Delhi has issued Circular No. 157/13/2021-GST dated 20<sup>th</sup> July, 2021 and clarified as under:-

*4(c) Appeals by taxpayers/ tax authorities against any quasi-judicial order:-*

*Wherever any appeal is required to filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order*



5. In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws."

**7.4** In view of above and also looking into the **Covid-19 pandemic situation** in the instant matter, I am inclined to condone the delay of filing of appeal. Therefore, I find that the present appeal is filed within stipulated time limit. Accordingly, I am proceeded to decide the case on merits considering the instant appeal as filed within period of limitation as ordered by the H'ble High Court of Gujarat.

#### **PERSONAL HEARING:**

**8.** Accordingly, the personal hearing was held on 11.10.2022, Shri Sanket Gupta, Authorized Representative, appeared before the appellate authority on behalf of the appellant and re-iterated that they have nothing to add to their written submissions till date.

#### **DISCUSSIONS AND FINDINGS:**

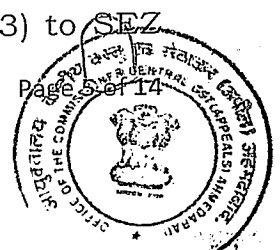
**9.** Now, the case is to be decided on merits whether the appellant is eligible for Refund on supply to the SEZ unit / developer or not after making payment of Integrated Goods and Services Tax i.e IGST.

**10.** The instant refund claim of Rs. 10,53,000/- was rejected by the adjudicating authority under Reference Number AA2410201029305 on the grounds that

(i) the amount of IGST charged on the supply has not been added to the taxable amount and

(ii) the endorsement of the specified officer of the SEZ was not on the front side of invoice.

**11.** I have carefully gone through the case, written submissions made by the appellant during the personal hearing and available records. The appellant supplied goods i.e Diesel Generating Sets (Qty Nos. 3) to SEZ



unit i.e M/s. Quartzkraft LLP, APIIC BP SEZ, Maddipadu, Mandal, Prakasham Dist, Andhra Pradesh under invoice nos (i) 874 and (ii) 875 both dated 28.01.2020 amounting to Rs. 51,00,000/- and Rs. 7,50,000/- under REMARKS "SUPPLY MEANT FOR EXPORT -SEZ Supply WITH PAYMENT OF INTEGRATED TAX - RS. 9,18,000/- AND RS. 1,35,000/-" respectively. The appellant then paid IGST amounting to Rs. 10,53,000/- as recorded in their GSTR-3B return for the month of January 2020.

**11.1** As per Section 16 of the IGST Act, 2017, the supply made to SEZ unit shall be treated as Zero rated supply. The Section 16 of IGST Act, 2017 is reproduced as below:

**"Section 16:-**

(1) **"zero rated supply"** means any of the following supplied of goods or services or both, namely:-

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) subject to the provisions of sub-section (5) of Section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund of unutilized input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of Section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed :

PROVIDED that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section alongwith the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999) for receipt of foreign exchange remittances, in such manner as may be prescribed.

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify -

(i) a class of person who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.

However, sub-section (3) prior to substitution may read as **under after substituted, ibid :**



“(3) A registered person making zero-rated supply shall be eligible to claim refund under either of the following options, namely -

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of Section 54 of the Central Goods and Services Tax, or the rules made thereunder.”

I find that the supply made by the appellant shall be treated as Zero rated supply, therefore, as per Section 16(3) of the IGST Act, 2017 they are eligible to claim the refund of IGST paid on the goods supplied to SEZ unit in accordance with the provisions of Section 54 of the CGST Act, 2017.

**Section 54 of the CGST Act, 2017 is reproduced as under :**

“54 (1) Any persons 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:

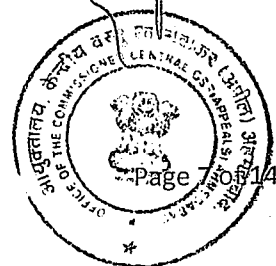
Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section(6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;

(b) refund of unutilized input tax credit under sub-section (3);”

**11.2** Further, the procedure for application of refund is prescribed under Rule 89 of the CGST Rules, 2017, the relevant text of Rule 89 is reproduced as under:





**Rule-89 of CGST Rules, 2017:**

**“89. Application for refund of tax, interest, penalty, fees or any other amount.”**

(1) Any person, except the persons covered under notification issued under Section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner;

Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of the section 49 may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7, as the case may be; Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone Developer, the application for refund shall be filed by the –

- (a) Supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorized operations, as endorsed by the specified officer of the Zone;
- (b) Supplier of services along with such evidence regarding receipt of services for authorized operations as endorsed by the specified officer of the zone.”

**11.3** Further, the Specified Officer, APIIC BUILDING PRODUCTS SEZ, Annangi Village, Maddipadu Mandal, Prakasham Dist., Andhra Pradesh, vide their letter F. No. VSEZ/BPSEZ/Customs/16/2022 dated 19.10.2022 (received through email to this office on dated 19<sup>th</sup> October, 2022) has communicated and submitted that the goods referred in the invoice Nos. 874 & 875 both dated 28.01.2020 were received in the SEZ on 03.02.2020 and 05.02.2020 respectively and the same were certified by the then Preventive Officer of SEZ and submitted the copies of invoices duly endorsed by the Specified Officer, APIIC BP SEZ. They also submitted the certified copies of SEZ-DTA procurement dated 03.02.2020 and 05.02.2020 of M/s. Quartzkraft LLP, with a declaration that “IGST/ Compensation Cess has not been collected by DTA Supplier from SEZ Unit / Developer.”

**11.4** From the available records, I find that the Appellant has supplied the goods to the SEZ unit i.e M/s. Quartzkraft LLP, APIIC BP SEZ, Maddipadu, Prakasham Dist., Andhra Pradesh situated in SEZ area and same were received in the SEZ on 03.02.2020 and 05.02.2020. Thus, I find that there is



no dispute of supply of goods to SEZ unit and receipt of goods by SEZ unit. On going through the DTA-Procurement receipts, I find that the goods under referred invoices have been received by SEZ unit without payment made by SEZ unit.

**11.5** Further, it is evident from the SEZ-DTA procurement receipt and disclaimer submitted by M/s. Quartzkraft LLP, SEZ unit dated 07.2.2020 that the appellant has not collected any IGST from them. I find that the appellant has mentioned IGST amount of Rs. 10,53,000/- in column 3.1 (b) Outward taxable supplies (zero rated) in their GSTR-3B for the month of January 2020, thus they have made payment of IGST charged on the supply. The appellant submitted in their written submission that they have issued invoices for supply of goods under Section 31 of the CGST Act, 2017 read with Tax invoice rule supply meant for Export SEZ supply with payment of IGST.

**Section 31 of CGST Act, 2017 is read as under :**

**“Section 31. Tax invoice.-**

*(1) A registered person, supplying taxable goods shall, before or at the time of,-*

*(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or*

*(b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:*

*Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.*

*(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:*

*<sup>1</sup>Provided that the Government may, on the recommendations of the Council, by notification,-*

*(a) specify the categories of services or supplies in respect of which a tax invoice shall be issued; within such time and in such manner as may be prescribed;*

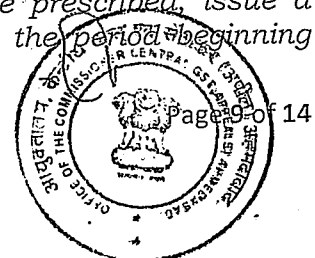
*(b) subject to the condition mentioned therein, specify the categories of services in respect of which-*

*(i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or*

*(ii) tax invoice may not be issued.]*

*(3) Notwithstanding anything contained in sub-sections (1) and (2)-*

*(a) a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning*



with the effective date of registration till the date of issuance of certificate of registration to him;

(b) a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(c) a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed:

**Provided** that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(d) a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

(e) where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;

(f) a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;

(g) a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

(4) In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

(5) Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,-

(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

(6) In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

\*\* (7) Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Further, 3<sup>rd</sup> proviso to Rule 46 has been substituted as per Notification NO. 17/2017-Central Tax dated 27.7.2017 is reproduced as under



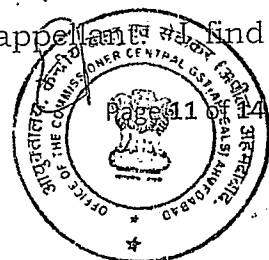
“.....  
 (iv) in rule 46, for the third proviso, the following proviso shall be substituted, namely:-

“Provided also that in the case of the export of goods or services, the invoice shall carry an endorsement **“SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS ON PAYMENT OF INTEGRATED TAX”** or **“SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX”**, as the case may be, and shall, in lieu of the details specified in clause (e), contain the following details, namely,- (i) name and address of the recipient; (ii) address of delivery; and (iii) name of the country of destination.”;

**11.6** I find that the endorsement **“SUPPLY MEANT FOR EXPORT – SEZ Supply WITH PAYMENT OF INTEGRATED TAX – “** are also made by the appellant on the referred invoices no. 874 & 875 both dated 28.01.2020.

**11.7** I find that the appellant have issued invoices to the unit situated in SEZ area and amount of IGST was duly paid by them at the time of filing GSTR-3B returns for the month of January 2020. I find that the adjudicating authority has accepted that the appellant has made IGST payment as evident from GSTR-3B return for the month of January 2020. Further, the recipient i.e M/s. Quartzkraft LLP has not paid the amount of IGST to the appellants. The recipient of goods in SEZ area, i.e M/s. Quartzkraft LLP, APIIC BP SEZ, Maddipadu Mandal, Prakasham Dist:, has submitted their disclaimer dated 07.02.2020 that they have not claimed / availed any input tax credit of the tax paid by the supplier i.e M/s. Supernova Engineers Ltd., located at 1470/1, Village – Rajpur, Ta. Kadi, Dist. Mehsana, Gujarat having GSTIN NO. 24AACCS6758G1Z7 under invoices no. 874 and 875 both dated 28.01.2020 by showing value of goods Rs. 51,00,000/- and Rs.7,50,000/- (total Rs. 58,50,000/-) with IGST amount Rs. 9,18,000/- and Rs. 1,35,000/- (total Rs. 10,53,000/-).

**11.8** Thus, I find that as per Section 31(1)(b) of the CGST Act,2017, the tax charged on value of goods requires to be mentioned in Tax invoice, and endorsement **“SUPPLY MEANT FOR EXPORT – SEZ Supply WITH PAYMENT OF INTEGRATED TAX – “** made on invoices as per 3<sup>rd</sup> proviso to the Rule 46 of CGST Rules, 2017. The rejection ground of refund claim that the amount of IGST charged on the supply has not been added to the taxable amount is not proper, tenable and it is just a procedural lapse on part of appellant. I find

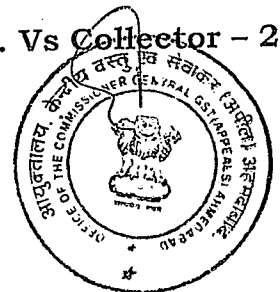


that the appellant is rightly eligible for refund claim as per GST Act and Rules made thereunder.

12. As per Circular No. 37/11/2018-GST dated 15<sup>th</sup> March 2018, the appellant required to file refund application in FORM GST-RFD-01 under Rule 89(1) with supporting documents. I find that the appellant accordingly filed an online refund application in FORM-GST-RFD-01 under Rule 89(1) of CGST Act, 2017 under the category of "Refund on account of supplies to SEZ Unit / SEZ developer with payment of tax", on account of zero rated supply made to SEZ unit for an amount of Rs. 10,53,000/- on 30.10.2020 bearing ARN NO. AA2410201029305 within the time limit period of two (2) years, which allows the proper officer to match invoices with GSTR-1 and GSTR-3B and also GSTR-2A.

12.1 After filing FORM-GST-RFD-01 on 30.10.2020, the appellant received a Show Cause Notice No. ZV2411200152978 dated 11.11.2020 for rejection of their refund application claim on the ground that the amount of IGST charged on the supply has not been added to the taxable amount and the endorsement of specified officer of the SEZ is not on the front side. In response of SCN No. ZV2411200152978 dated 11.11.2020, the appellant submitted that they had not received the tax amount from the recipient of the goods, therefore the IGST amount was not added in the total amount after payment of tax. However, they have paid the IGST amount to the government exchequer as evident from their GSTR-3B for the month of January-2020.

13. Thus, I find that the appellant has duly complied with the law and fulfilled all the requirements for their refund eligibility under CGST Act and CGST Rules made thereunder and rightly claimed the refund under the provisions of CGST Act, 2017. I find that the impugned order to the extent that the appellants are not eligible to claim refund, without considering the facts / merits of the case, is bad in law. Such a conduct of the adjudicating authority deprives the appellants of the right to refund of IGST for which they are eligible, otherwise. In this regard, I rely upon the observations made by the Supreme Court in the case of **Unichem Laboratories Ltd. Vs Collector - 2002 (145) ELT 502 (SC) :**



"13. .... There can be no doubt that the authorities functioning under the Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with law – no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly."

14. I find that the appellant's contention that the adjudicating authority has over looked the submissions of the appellant and mechanically rejected the refund claim without recording of giving any material finding or any cogent reasons. The amount of IGST charged of supply of goods have already been paid not added by the appellant and endorsement of specified officer of the SEZ on the front side are just procedural which does not directly amounts to rejection of their eligibility of refund claim. However, the adjudicating authority would have been taken liberty and empowered to verify the genuineness of the invoices and receipt of the goods in SEZ unit from the respective SEZ Authority before rejection of refund claim. I find that the adjudicating authority has not considering the merits of the case and mechanically rejected the refund claim on frivolous grounds which resulted into a non-speaking order.

15. I find that the procedures are prescribed to facilitate verification of substantive requirement. As long as a fundamental requirement is met other procedural deviation must be condoned, which is also supported in case of *Mangalore Chemicals and Fertilizers Limited Vs. Deputy Commissioner – 1991 (55) ELT 437 (SC)*, wherein the H'ble Supreme Court made a distinction between the procedural condition of the technical nature and the substantive condition and held that non-observance of former was condonable while that of the latter was not condonable. I also relied on the decision of the H'ble High Court of Madras in the case of *Ford India Pvt. Ltd Vs. Assistant Commissioner of Central Excise – 2011 (272) ELT 353 (Mad. HC)*, wherein the H'ble High Court held that "... the procedural infraction of Notification/ Circulars are to be condoned, if exports have really taken place and that the substantive benefit cannot be denied on procedural lapses....." and "...so long as there is substantive compliance and that the fact of export is not in doubt, rebate being beneficial scheme, cannot be denied on mere technicalities." In this case, supply made to the SEZ unit by the appellant and IGST payment made to government exchequer, is not in question by the adjudicating authority, this is an export beneficial scheme, and



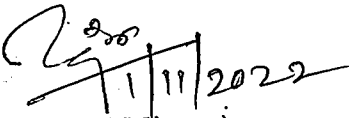
I find that the refund claim is rejected by the adjudicating authority denied on mere technicalities and procedural lapses i.e the amount of IGST charged on the supply was not been added to the taxable amount and endorsement of the Specified Officer of the SEZ was not on the front side. Hence, the impugned order is not proper and legal and liable to be set aside.

16. Looking to the facts involved in the matter as discussed in foregoing paras and merits of the instant case, I am of the opinion that the appellant should not be made to suffer any more. I direct the adjudicating authority to take necessary steps to process the refund claim of the appellant according to the provisions under CGST Act, 2017 & CGST Rules made thereunder as well as according to order of the H'ble High Court of Gujarat in SCA No. 19196 of 2021. Thus, appeal filed by the appellant is allowed in above terms.

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

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

Attested



(Tejas J Mistry)  
Superintendent,  
Central Tax (Appeals), Ahmedabad

By R.P.A.D.

To

M/s. Supernova Engineers Limited (GSTIN : 24AACCS6758G1Z7),  
F-2, 1<sup>st</sup> Floor, Sapath Hexa, Opp. Gujarat High Court, S G Highway,  
Ahmedabad - 380 060  
(Works : 1470/1, Vill : Rajpur, Ta. Kadi, Dist - Mehsana (NG))

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 Dy / Assistant Commissioner, Range-V, CGST & C.Ex, Division-Kadi, Commissionerate-Gandhinagar
5. The Additional Commissioner, Central Tax (System), Gandhinagar.
6. The Superintendent, Range-V, CGST Division - Kadi,
7. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
8. Guard File.
9. P.A. File.

(Mihir Rayka)  
Additional Commissioner (Appeals)

Date: .10.2022



