



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. : 20221164SW000000FDDA

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/35 & 44/2022 **3529-35**

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-63 to 64/2022-23**
दिनांक Date : **29-11-2022** जारी करने की तारीख Date of Issue : 30-11-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZV2409210333133** dated **24.09.2021** and Order-in-Original No. **ZP2409210333244** dated **24.09.2021** issued by the Deputy Commissioner, Central Goods and Service Tax, Division Gandhinagar, Gandhinagar Commissionerate

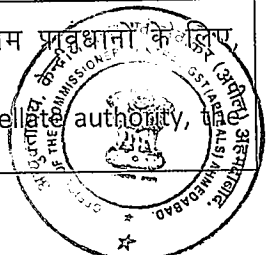
घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Oracle India Private Limited [GSTIN-24AAACO0158L1ZK]

Floor No. 22, Gift One Building, Road - 5C,

Gift City, Ratanpur, Gandhinagar - 382355

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



ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE:

M/s. Oracle India Private Limited, Floor No. 22, Gift One Building, Road-5C, Gift City, Ratanpur, Gandhinagar – 382 355 (hereinafter referred to as “the appellant”) has filed the following appeals against Refund Rejection Order (hereinafter referred to as “the impugned order”) passed by the Deputy Commissioner, CGST, Division – Gandhinagar, Gandhinagar Commissionerate (hereinafter referred to as “the adjudicating authority”) rejecting refund claims filed by the appellant.

Sr. No.	Appeal File Number	Date of filing of appeal	Refund rejection Order (Impugned Order) No. & Date	Amount of Refund (in Rs.)
1	GAPPL/ADC/GSTP/35/2022	30.12.2021	ZV2409210333133, dated 24.09.2021	5672569/-
2	GAPPL/ADC/GSTP/44/2022	30.12.2021	ZP2409210333244, dated 24.09.2021	3044149/-

2. Brief facts of the case in both these appeals is that the appellant registered under GSTIN 24AAACO0158L1ZK, has filed refund claim(s) for refund of accumulated Input Tax Credit paid on input/ input services used in export of services for the period from (i) July 2018 to September 2018 for Rs. 56,72,569/- and (ii) January 2019 to March 2019 for Rs. 30,44,149/- respectively under Section 54 of the CGST Act, 2017. The appellant was issued Show Cause Notice(s) proposing rejection of refund on the ground that *subject refund claim is liable to be rejected as the same is filed beyond the stipulated period of 2 years from the relevant date* respectively. Subsequently, the appellant was issued Refund Rejection Order(s) on dated 24.09.2021 proposing rejection of refund on the grounds that *the refund application filed vide ARN NO. AA240721102009T dated 27.07.2021 and vide ARN NO. AA240721102463R dated 27.07.2021 respectively as time barred and reject the same in accordance with the Section 54(1) of the CGST Act, 2017 read with the Circular No. 125/44/2019-GST dated 18.11.2019.*

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



i. The impugned order(s) be set aside to the extent it is prejudicial to the interests of the appellant and consequential relief of full refund may be granted, as the refund claim(s) is not barred by time limitation on the benefit of suo motu order of the Supreme Court vide order dated 27.04.2021 in Miscellaneous application No. 665/2021 in SMW (C) No. 3/2020 where the Supreme Court restored its order dated 23.3.2020.

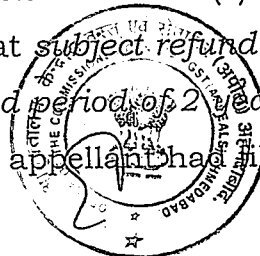
ii. An opportunity of hearing may be granted in the interest of justice before passing any adverse order.

4. Personal hearing in the matter on both appeals held on 6.10.2022 on virtual mode, Ms. Rajeshwari KG, Authorised Representative appeared on behalf of the appellant in both appeals. During P.H. she has been requested 07 working days for additional submissions and granted for the same. In the additional submission dated 20.10.2022, they submitted that they relied on the recent Supreme Court Decision vide order dated 10.01.2022 in Miscellaneous Application No. 665/2021 in SMW (C) NO. 3/2020, where the Supreme Court restored its order dated 23.03.2020.

Discussion and Findings :

5. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum and additional submissions. I find that the 'Appellant' had preferred the refund application(s) on account of "accumulated Input Tax Credit paid on input/ input services used in export of services for the period from (i) July 2018 to September 2018 for Rs. 56,72,569/- and (ii) January 2019 to March 2019 for Rs. 30,44,149/- respectively under Section 54 of the CGST Act, 2017. In response to aforesaid refund application(s) filed by the appellant, deficiency memos DM-1 to DM-5 were issued to the appellant on 14.09.2020, 12.11.2020, 3.2.2021, 11.5.2021 and 2.7.2021 and accordingly the appellant has filed fresh refund application on 27.07.2021 vide ARN NO. AA2407211020096 for the period from June'18 to Sept'18 and deficiency memos DM-1 & DM-2 were issued on 8.2.2021 and 11.5.2021 and accordingly appellant has filed fresh refund application on 26.4.2021 vide ARN No. AA2404210883801 for the period from March 2019 to September 2019.

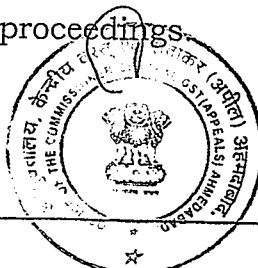
5.1 Thereafter, they were issued show cause notice(s) dated 26.08.2021 proposing rejection of refund on the ground that *subject refund claim is liable to be rejected as the same is filed beyond the stipulated period of 2 years from the relevant date* respectively. In this regard, I find that the appellant had filed replies to SCN(s)



under Form RFD-09 both dated 10.09.21 for refund application tax period July 2018 to September 2018 and for refund application tax period January 2019 to March 2019 respectively. Further, I find that the appellant had also pointed out that they had initially filed refund application on 29.08.2020 and 21.01.2021 respectively and therefore, as per Circular No. 125/44/2019 dated 18th November 2019 and as per Notification No. 55/2020-Central Tax, dated 27.6.2020 they are eligible for refund considering the said date. However, I find that the adjudicating authority vide impugned order has rejected the refund claim (i) July 2018 to September 2018 for Rs. 56,72,569/- and (ii) January 2019 to March 2019 for Rs. 30,44,149/- respectively without considering the reply of the appellant on the grounds that *the refund application filed vide ARN NO. AA240721102009T dated 27.07.2021 and vide ARN NO. AA240721102463R dated 27.07.2021 respectively as time barred and reject the same in accordance with the Section 54(1) of the CGST Act, 2017 read with the Circular No. 125/44/2019-GST dated 18.11.2019.*

5.2 I find that in this case refund claim(s) were rejected solely on time limitation ground. From the facts of the case I find that the refund claim(s) for the period (i) July 2018 to September 2018 and for the period (ii) January 2019 to March 2019 were filed on 29.08.2020 and 21.01.2021 respectively and after receiving deficiency memos, the appellant filed fresh application on 27.07.2021 vide ARN NO. AA2407211020096 and on 26.4.2021 vide ARN No. AA2404210883801 respectively, certain period 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 the above context, I find that the Hon'ble Supreme Court in Misc. Application No. 665/2021 in SMW(C) No. 3/2020 vide Order dated 23.09.2021 ordered that for computing the period of limitation for any suit, appeal, application or proceedings 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 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 ordered 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.



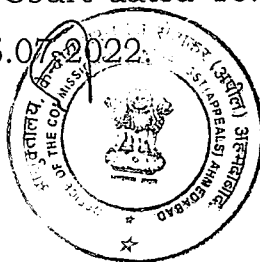
5.3 Further, I find that on the subject matter recently Notification No. 13/2022-Central Tax dated 05.07.2022 has been issued by the CBIC. The relevant para is reproduced as under :

(iii) excludes the period from the 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.

5.4 In view of foregoing facts, I find that in respect of refund claims for which due date for filing refund claim falls during period from 01.03.2020 to 28.02.2022, two years time limit under Section 54 of the CGST Act, 2017 is to be reckoned, excluding said period. In the subject case, the claim was filed for the period (i) July'18 to September'18 and (ii) January 2019 to March 2019 considering the due date prescribed under Section 54 the claim period for which the due date falls during 01.03.2020 to 28.02.2022 is not hit by time limitation under Section 54 of the CGST Act, 2017.

5.5 I find that in the present matter the claim was filed for the period for the period (i) July'18 to September'18 and (ii) January 2019 to March 2019, accordingly, following the order of the 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 rejection of refund claim(s) of Rs. 56,72,569/- and Rs. 30,44,149/- respectively on the ground of time limitation is not legal and proper. Hence, the appeal(s) filed by the appellant succeeds on time limitation ground. Needless to say, since the claim was rejected on the ground of time limitation, the admissibility of refund on merit is not examined in this proceeding. Therefore, any claim of refund filed in consequence 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 thereunder as well as in the light of order of the Hon'ble Supreme Court dated 10.01.2022 and CBIC's Notification No. 13/2022-Central Tax dated 05.07.2022.



6. In view of above discussions, the *impugned order(s)* passed by the *adjudicating authority* is/are set aside for being not legal and proper to the extent of rejection of refund claim(s). Accordingly, I allow the appeal(s) of the "*Appellant*" without going into merit of all other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

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

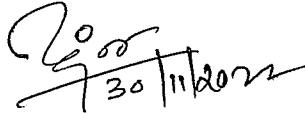
The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 29.11.2022

Attested


30/11/2022

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

By R.P.A.D.

To

M/s. Oracle India Private Limited [GSTIN 24AAACO0158L1ZK],
Floor No. 22, Gift One Building, Road-5C,
Gift City, Ratanpur, Gandhinagar – 382 355

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

