



सत्यमेव जयते

आयुक्त(अपील)काकार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
0792630506- टेलिफैक्स07926305136



DIN NO. : 20221264SW000000A631

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1738-39/2022 / 5310-16

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-ADC-69 to 70/2022-23
दिनांक Date : 12-12-2022 जारी करने की तारीख Date of Issue : 12-12-2022श्री. मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित
Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)ग Arising out of Order-in-Original No ZN2401220087992 dated 10.01.2022 &
OIO No. ZW2401220087825 dt. 10.01.2022 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

1. M/s Kamlesh Somabhai Patel[GSTIN: 24ADIPP0287H1ZH]
(Trade Name: M/s Ketav Consultant)
Plot No. 21-25-26-27-28, Block No. 518, Juna Babalpura Patia,
Village Sapa Dehgam Modasa Road, Gandhinagar - 382305

(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 - (v) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (vi) 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 अपील्य 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.



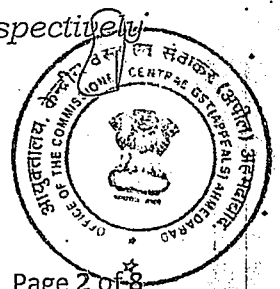
ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE:

M/s. Kamlesh Somabhai Patel, (Trade Name : M/s. Ketav Consultant), Plot No. 21-25-26-27-28, Block No. 518, Juna Babalpura Patia, Village Sapa Dehgam Modasa Road, Gandhinagar, Gujarat - 382 305 (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/1739/2022	27.05.2022	ZW2401220087825, dated 10.01.2022	14,37,240/-
2	GAPPL/ADC/GSTP/1738/2022	27.05.2022	ZN2401220087992, dated 10.01.2022	16,42,760/-

2. Brief facts of the case in both these appeals is that the appellant registered under GSTIN 24ADIPP0287H1ZH, has filed refund claim(s) for refund of excess payment of taxes at the time of filing of GSTR-3B for the month of (i) August-2017 for Rs. 14,37,240/- and (ii) October-2017 for Rs.16,42,760/- respectively under Section 54(1) of the CGST Act, 2017. The appellant was issued Show Cause Notice(s) proposing rejection of refund on the ground that "there was a delay in filing refund application and the claimant was asked to show cause as to why their refund application should not be rejected being not attending the personal hearing at given date and time". Subsequently, the appellant was issued Refund Rejection Order(s) on dated 10.01.2022 proposing rejection of refund on the grounds that the refund application filed vide (i) ARN NO. AA2412200031951 dated 02.12.2020 & vide ARN NO. AA240321107831T DATED 30.03.2021 (for the month of August-2017) and (ii) vide ARN NO. AA240120003223A dated 02.12.2020 & vide ARN No. AA2403321108826J dated 31.03.2021 (for the month of October-2017) respectively as time barred and liable for rejection."



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

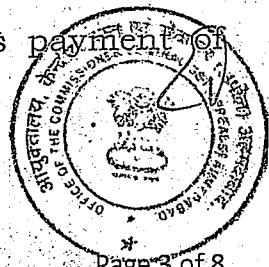
- i. Appellant is required to file appeal within four months including extended period.
- ii. The appellant tender unconditional apology for not filing appeal in time. The applicant say and submit that there was no deliberate intention on the part of the applicants not to file appeal within time limit but because of beyond control of the applicant, the applicant could not file the appeal within stipulated time and given 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.
- iii. It is requested that application for COD may kindly be condoned and heard the appeal on merit. If the application is allowed, nothing prejudice would be caused to the respondent but on the other hand if the application is not allowed, irreparable loss would be caused to the applicant, which cannot be compensated in terms of money.
- iv. The impugned order(s) without providing sufficient opportunity of being heard is illegal, unjustified, bad in law and hence needs to be summarily quashed to meet the ends of justice.

PERSONAL HEARING :

4. Personal hearing in the matter on both appeals held on 6.10.2022 on virtual mode, Mr. Jaykishan Vidhwani, Authorised Representative, appeared on behalf of the appellant in both appeals. During P.H. he has been requested 07 working days for additional submissions and granted for the same, however they failed to submit the additional submissions as granted to them.

DISCUSSION AND FINDINGS:

5. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is (i) whether the appeal has been filed within the prescribed time-limit and (ii) whether the refund claims / applications filed by the appellant for the month of August-2017 & October-2017 on account of excess payment of taxes at the time of filing of GSTR-3B are time barred or not.



6. First of all, I would like to take up the issue of filing the appeal and before deciding the issue on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:

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.

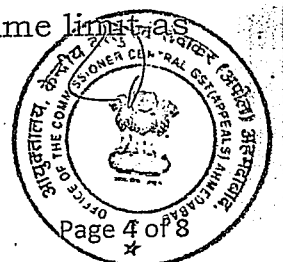
(2)

(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.

6.1 In the present appeal the "impugned order(s)" issued on 10.01.2022, I observed that in the instant case the appeal has been filed on 27.5.2022 under Section 107(1) of the CGST Act, 2017, so the normal appeal period of three months was available to the appellant upto 09.04.2022. Accordingly, the appeal was required to be filed on or before 09.04.2022.

6.2 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. So, excluding the period from 15.03.2020 to 28.02.2022, the appellant required to file appeal on or before 28.05.2022. In the instant case, the appellant filed appeal(s) on 27.05.2022, therefore, I find that the present appeal is filed within prescribed time limit as per the H'ble Supreme Court's order dated 10.01.2022.

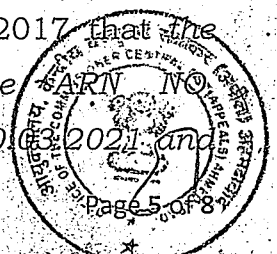


7. Now, I take up the issue that whether the refund claims / applications filed by the appellant for the month of (i) August-2017 for Rs. 14,37,240/- and (ii) October-2017 for Rs.16,42,760/- respectively on account of excess payment of taxes at the time of filing of GSTR-3B are time barred or not.

7.1 I have carefully gone through the facts of the case available on records and submissions made by the 'Appellant' in the Appeal(s) Memorandum. I find that the 'Appellant' had preferred for refund of excess payment of taxes at the time of filing of GSTR-3B for the month of (i) August-2017 for Rs. 14,37,240/- and (ii) October-2017 for Rs.16,42,760/- respectively under Section 54(1) of the CGST Act, 2017. In response to the aforesaid refund application(s) filed by the appellant, deficiency memo was issued to the appellant on the ground that the same has been filed beyond the period of 2-years of relevant date as stipulated under section 54(1) of the CGST Act, 2017 read with Para 12 of Circular No. 125/44/2019-GST dated 18.11.2019 and accordingly the appellant has filed fresh refund application on 12.11.2021 vide ARN NO. AA2411210214911 for the month August-2017 and on 12.11.2021 vide ARN No. AA241121021538R for the month October-2017.

7.2 Thereafter, they were issued show cause notice(s) dated 3.12.2021 proposing rejection of refund on the ground that *there was a delay in filing refund application and as to why their refund application should not be rejected being not attending personal hearing at given date and time and refund claim is time barred and liable for rejection.*

In this regard, I find that the appellant in his defense submissions submitted on dated 17.12.2021 that they have made excess payment of taxes at the time of filing of GSTR-3B for the month of (i) August 2017 and (ii) October 2017 respectively. This excess payment was on account of non-adjustment of GST paid on advance against the GST liability at the time of issuance of invoice in subsequent tax period. The said excess payment came to notice at the time of GST annual reconciliation and audit. Further, I find that the appellant filed their GSTR-9C returns on 28.01.2020. The appellant also submitted that the statutory time limit prescribed under Act is not applicable if the tax is paid mistakenly. However, I find that the adjudicating authority vide impugned order has rejected the refund claim(s) for the month of (i) August-2017 for Rs. 14,37,240/- and (ii) October-2017 for Rs.16,42,760/- respectively under Section 54(1) of the CGST Act, 2017. *that the refund application filed for the month of August-2017 vide ARN NO. AA2412200031951 dated 02.12.2020 & AA240321107831T dated 30.03.2021 and*



for the month of October-2017 filed vide ARN NO. AA241220003223A dated 02.12.2020 & AA240321108826J dated 31.03.2021 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. I find here relevant to refer to the provisions to file refund claim(s) under Section 54(1) of the CGST Act, 2017, which is read as under:

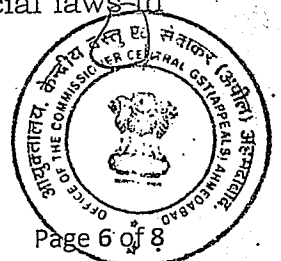
“Section 54. Refund of tax -

(1) Any person 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 [such form and] manner as may be prescribed.....”

7.3 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 month of (i). August-2017 for Rs. 14,37,240/- and (ii) October-2017 for Rs.16,42,760/- respectively and after receiving deficiency memos, the appellant filed fresh application(s) on 12.11.2021 vide ARN NO. AA2411210214911 and on 12.11.2021 vide ARN No. AAAA241121021538R respectively, which are beyond two years time limit from the relevant date prescribed under Section 54(1) of the CGST Act, 2017 and Rule 89 of the CGST Rules, 2017 made thereunder.

7.4 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, the 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.



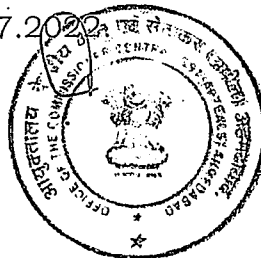
7.5 Further, I find that on the subject matter recently Notification No. 13/2022-Central Tax dated 05.07.2022 has been issued by the CBIC. The relevant para is reproduced as under :

(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.

7.6 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 month of (i) August-2017 for Rs. 14,37,240/- and (ii) October-2017 for Rs.16,42,760/- respectively on 2.12.2020 considering the due date prescribed under Section 54 of the CGST Act, 2017 the claim period for which the due date falls during 01.03.2020 to 28.02.2022 is completely hit by time limitation under Section 54(1) of the CGST Act, 2017.

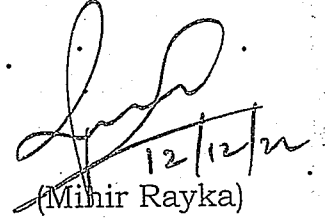
7.7 I find that in the present matter the refund claim was filed on 2.12.2020 for the month of (i) August-2017 for Rs. 14,37,240/- and (ii) October-2017 for Rs.16,42,760/- respectively, accordingly, following the order of the Hon'ble Supreme Court in MA 665/2021 in SMW(C) No. 3/2020 as well as in the light of Notification No. 13/2022-Central Tax dated 05.07.2022, I hold that the rejection of refund claim(s) of Rs. 14,37,240/- and Rs.16,42,760/- respectively on the ground of time limitation is completely legal & proper and rightly as per law. Hence, the appeal(s) filed by the appellant does not succeed 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.



8. In view of above discussions, the *impugned order(s)* passed by the *adjudicating authority* is/are upheld for being legal and proper and as per law to the extent of rejection of refund claim(s) on time limitation in terms of Section 54 of the CGST Act, 2017. Accordingly, I reject the appeal(s) of the "Appellant" without going into merit of all other aspects in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

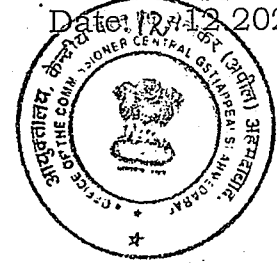
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

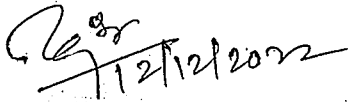

(Minir Rayka)

Additional Commissioner (Appeals)

Date: 12/12/2022



Attested


12/12/2022

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

By R.P.A.D.

To

M/s. Kamlesh Somabhai Patel [GSTIN 24ADIPP0287H1ZH],
(Trade Name : M/s. Ketel Consultant), Plot No. 21-25-26-27-28, Block No. 518,
Juna Babalpura Patia, Village Sapa Dehgam Modasa Road, Gandhinagar, Gujarat -
382 305

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.