



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- 20230864SW0000424177

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2041/2023 -APPEAL /4563 - 68

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC-16/2023-24  
दिनांक Date : 17-08-2023 जारी करने की तारीख Date of Issue : 17-08-2023

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri.Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. ZK2401230334304 DT. 26.01.2023 issued by The Deputy Commissioner, CGST., Divison-Gandhinagar, Gandhinagar Commissionerate.

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

M/s.Netgeo Impex Pvt. Ltd.,  
Plot No. 81/19/A, Makarpura,  
Vadodara, Gujarat - 390014

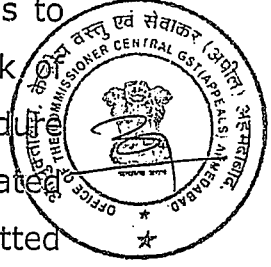
(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax ( Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <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 appellate 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 under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "*the Act*") by **M/s. Netgeo Impex Pvt Ltd.**, Plot No. 81/19/A, Makarpura, Vadodara, Gujarat-390 014(hereinafter referred to as "*Appellant*") against the Order No. ZK2401230334304 dated 26.01.2023 (hereinafter referred to as "*impugned order*") passed by the Deputy Commissioner, CGST, Gandhinagar Division, Gandhinagar (hereinafter referred to as "*the Adjudicating Authority/ Proper Officer*").

2. Facts of the case, in brief, is that the *appellant* is registered under the Central Goods and Services Tax Act, 2017 vide GST Registration GSTIN 24AAGCN7801H1ZK. A Show Cause Notice was issued to the appellant vide SCN No. ZL2401230249937 dated 19.01.2023, asking as to why their refund claim should not be rejected on the grounds of lack of jurisdictional authority after remapping the GSTIN through proper procedure in the GST portal. The appellant was also given Personal Hearing on dated 23.01.2023 but the appellant neither appeared for the same nor submitted any written submissions. Accordingly, refund had been rejected said SCN.



3. Thereafter, the refund was rejected vide *impugned order* No. ZK2401230334304, dated 26.01.2023 for the following reasons:

- The Principal place of business of GSTIN 24AAGCN7801H1ZK is 719, Seventh Floor, Shivalik Shilp, Iscon Cross Road, Iscon, Ahmedabad 380015, is not falling under jurisdiction of CGST, Gandhinagar Division.
- Core amendment was done in the GSTIN in the month of April 2022 and Principal place of business address is Vadodara as per GSTIN details, the GSTIN continues to be mapped under CGST Gandhinagar Division.
- As per Trade Notice 01/2017 dated 16.06.2017 the jurisdiction of CGST Gandhinagar extends only to Gandhinagar district, the jurisdiction of this office does not extend to Vadodara and hence this office does not exercise jurisdiction over the claimant GSTIN with Principal place of business address in GIDC Makarpura, Vadodara.
- They have filed the refund claim in this office without jurisdiction and not before proper officer as per GST Act and Rules and the same should be rejected on the grounds of lack of jurisdiction and refund has to be filed

*with the proper officer who has jurisdictional authority after remapping the GSTIN through proper procedure in the GST portal.*

4. Being aggrieved with the *impugned order*, the *appellant* has preferred the present appeal online on 09.03.2023 and submitted the documents to this office on 30.06.2023. In the appeal memo the appellant has submitted that –

- *The adjudicating authority had wrongly rejected the refund application giving round-“Lack of jurisdiction”.*
- *Due to technical error from the side of GSTN portal in its allocation of the case of the proper jurisdictional officer. Due to allocation of refund application for verification and approval to the officer having jurisdiction in Gandhinagar (Despite of the fact that jurisdiction is Vadodara) the said offices giving reason that the jurisdiction of taxpayer does not fall under him, rejects the refund application.*
- *It is not in hands of taxpayer to select the jurisdiction while applying for the refund, it is not error of any kind from the end of taxpayer.*
- *While filing RFD-09 due to human error fails to attach the reply with application.*
- *The order issued on 26.01.2023 without giving second opportunity to provide attachment and reply through GST Portal.*
- *The order passed is time barred being not passed within time limit provided in section 54(7) of the CGST Act, 2017, it does not create any legal effect and suffice to be called as not est in the law.*



In view of above, the appellant has requested to set aside the Order in Original or pass an order granting refund with consequential benefits in terms of interest as mentioned in statement of facts.

**Personal Hearing :-**

5. Personal Hearing in the matter was held on 10.08.2023 wherein, Mr. Sanjay Sarawat appeared as authorized representative. During Personal Hearing he reiterated the written submission and requested that this is a case of wrong assignment by portal. Earlier the taxpayer fall under Gandhinagar Division till 31.03.2023 and changed their *Principal place of business to Markarpura Division Vadodra Commissionerate w.e.f. 01.04.2022, but due to some technical glitches the refund application filed on 25.11.2022 assigned to Gandhinagar which was rejected being not the proper jurisdictional officer. Since it is case of wrong allotment beyond the control of taxpayer, the appeal may be allowed to direct jurisdictional officer to process the claim.*

**Discussion and Findings :-**

6. 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 claim should be allowed, as the same had been rejected on the grounds of lack of jurisdiction.

7. First of all, I would like to take up the issue of filing the appeal and before deciding the issue of filing the appeal 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.**

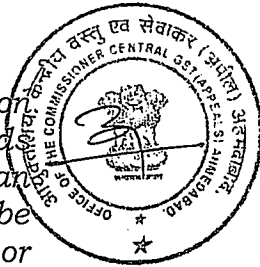
8. I observed from the submission of appellant that in the instant case the appeal has been filed online on 09.03.2023, thereafter **submitted the copy of order appealed against, on 30.06.2023 in this office (after more than seven days, date of filing of the appeal).** Accordingly, it is pertinent to refer Rule 108 of the CGST Rules, 2017. The same is reproduced as under:

**Rule 108. Appeal to the Appellate Authority.-**

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

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

(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing of appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf:



**Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.**

**Explanation.** -For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

Accordingly, in view of above provisions, I observed that in the instant case the appeal has been filed on 09.03.2023 i.e. appeal filed by delay 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.

9. In the present matter, the "impugned order" is of 26.01.2023. the normal appeal period of three months was available up to 26.04.2023 whereas, the present appeal is filed online on 09.03.2023 without required documents but **submitted the copy of order appealed against on 30.06.2023 in this office.** Accordingly, in view of foregoing I find that the present appeal is filed beyond the time limit as prescribed under Section 107(1) of the CGST Act, 2017. Further, looking to the COD application of Appellant, I observed that even after condoning delay of filing of appeal for a further period of one month as per provisions of sub section (4) of Section 107 of the CGST Act, 2017 the last date for filing of appeal comes on 26.05.2023, whereas **submitted the copy of order appealed against on 30.06.2023 in this office and this office has issued acknowledgement in this regard.**

10. In view of foregoing, I find that as per Rule 108 of the CGST Rules, 2017, the present appeal is filed in this office on **30.06.2023, beyond the time limit prescribed under the provisions of Section 107 of the CGST Act, 2017.** Accordingly, I find that the further proceedings in case of present appeal can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.



**11.** I find that this appellate authority is a creature of the statute and has to act as per the provisions contained in the CGST Act. This appellate authority, therefore, cannot condone delay beyond the period permissible under the CGST Act. When the legislature has intended the appellate authority to entertain the appeal by condoning further delay of only one month, this appellate authority cannot go beyond the power vested by the legislature. My views are supported by the following case laws:

(i) The Hon'ble Supreme Court in the case of **Singh Enterprises** reported as 2008 (221) E.L.T.163 (S.C.) has held as under:

*"8. ...The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."*

- (ii) In the case of Makjai Laboratories Pvt Ltd reported as 2011 (274) E.L.T. 48 (Bom.), the Hon'ble Bombay High Court held that the Commissioner (Appeals) cannot condone delay beyond further period of 30 days from initial period of 60 days and that provisions of Limitation Act, 1963 is not applicable in such cases as Commissioner (Appeals) is not a Court.
- (iii) The Hon'ble High Court of Delhi in the case of Delta Impex reported as 2004 (173) E.L.T. 449 (Del) held that the Appellate authority has no jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days.

**12.** I find that the provisions of Section 107 of the Central Goods and Services Tax Act, 2017 are *parimateria* with the provisions of Section 85 of the Finance Act, 1994 and Section 35 of the Central Excise Act, 1944 and hence, the above judgments would be squarely applicable to the present appeal also.

**13.** By respectfully following the above judgments, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under proviso to Section 107(4) of the Act. Thus, the appeal filed by the *appellant* is required to be dismissed on the grounds of

limitation as not filed within the prescribed time limit in terms of the provisions of Section 107 of the CGST Act, 2017. I, accordingly, dismiss the present appeal.

अपीलकर्ताद्वारादर्जकी गईअपीलकानिपटाराउपरोक्ततरीकेसेकियाजाताहै।

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

*Asaram*  
17/08/2023  
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 17.08.2023

Attested

*[Signature]*  
(Sandheer Kumar)  
Superintendent (Appeals)

By R.P.A.D.

To,  
M/s. Netgeo Impex Pvt Ltd.,  
Plot No. 81/19/A, Makarpura,  
Vadodara, Gujarat-390 014

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Gandhinagar Division.
4. The Deputy/Assistant Commissioner, CGST, Division-Gandhinagar, Gandhinagar.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

