



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- 20230864SW000094879B

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2044/2023--APPEAL

14652-52

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC-17/2023-24
दिनांक Date : 18-08-2023 जारी करने की तारीख Date of Issue : 18-08-2023

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. ZL2404230251907 DT. 19.04.2023 issued by The Assistant Commissioner, CGST., Divison-Kadi, Gandhinagar Commissionerate.

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

M/s.Supernova Engineers Limited,

F-2, 1st Floor, Sapath Hexa, Opp. Gujarat High Court,

S.G. Highway, Ahmedabad, Gujarat - 380060

(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 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 Supernova Engineers Limited, F-2, 1st Floor, Sapath Hexa, Opposite Gujarat High Court, SG Highway, Ahmedabad : 380 060 (hereinafter referred to as the 'Appellant') has filed the present appeal against the Order No. ZL2404230251907 dated 19.04.2023 (hereinafter referred to as the 'impugned order') rejecting the refund claim on the ground of limitation, amounting to Rs. 21,55,130/- passed by the Assistant Commissioner, CGST & C. Ex., Division- Kadi, Gandhinagar Commissionerate (hereinafter referred to as the 'adjudicating authority').

2(i). Briefly stated the facts of the case are that the 'Appellant' is holding GST Registration No. 24AACCS6758G1Z7 is engaged in manufacture and sale of Diesel Gensets (DG sets). In the month of November 2017, the Appellant had supplied DG sets to M/s. Intas Pharmaceuticals Ltd, Pharmez Plant, situated at SEZ area, with payment of IGST amounting to Rs. 21,55,130/- raising 4 invoices. The said refund is for supplies made to SEZ Unit on payment of applicable duty during the period Nov-2017 for which due date of payment of tax is 20.12.2017. However the claimant discharged their tax liability on 21.12.2021. Therefore, as per provision of Section 54(14)(2)(h), the application has to be filed before the relevant authority on or before expiry of the two years from the date of payment of tax i.e. in this case is 20.12.2019. However, the claimant filed original application on 10.03.2021 under the category of Export of Service-With Payment of Tax. Accordingly application of appellant has been rejected by the impugned Order No. ZL2404230251907 dated 19.04.2023, on the limitation issue.

2(ii). Pursuant to aforesaid, the Assistant Commissioner of CGST Gandhinagar Commissionerate issued the Show Cause Notice, proposing to reject the refund claim of the appellant on account of the following reasons:

"The said refund is for supplies made to SEZ Unit on payment of applicable duty during the period Nov-2017 for which due date of payment of tax is 20.12.2017. However the claimant discharged their tax liability on 21.12.2021. Therefore, as per provision of Section 54(14)(2)(h), the application has to be filed

before the relevant authority on or before expiry of the two years from the date of payment of tax i.e. in this case is 20.12.2019. However, the claimant filed original application on 10.03.2021 under the category of Export of Service-With Payment of Tax. Application of claimant rejected on the limitation issue. The claimant preferred an appeal as they are unable to view Show Cause Notice and couldn't reply the same. The appellate authority allowed the appeal on account of principles of natural justice without going into the merits of the case. The claimant supplied goods to SEZ unit on payment of tax thus actual category for original refund application should be "On account of Supplies made to SEZ unit/SEZ Developer with payment of tax". Further, the claimant argued that before 01.10.2022 i.e. insertion of Subsection 54(14))2)(ba) there is no relevant date prescribed for filing of refund in case of SEZ supplies which is factually incorrect as there is a clear provision in above referred Section 54(14)(2)(h) in any other case, the date of payment of tax. Therefore, it is clear that the relevant date is date of payment of tax which is in this case if 21.12.2017 and original application filed before competent authority is 10.03.2021. The claimant argued that they had inadvertently filed their SEZ supplies as Export supplies and their refund got stuck in icegate, but the time limit of two years is sufficient to rectify the same if found necessary and file refund claim within stipulated time limit. Therefore, the refund claim is liable for rejection on the ground of limitation."



2(iii). Thereafter, the refund was rejected

vide *impugned order* for the following reasons :

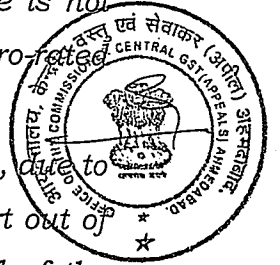
- they have filed the refund application on 10.03.2021, which was not filed within the prescribed time lime and filed after lapse of 03 years 03 months from the date of payment of duty.
- they had not submitted any reply to the SCN nor appeared for personal hearing.
- as per provision of Section 54(14)(2)(h), they had to filed before the relevant authority on or before expiry of the two years from the date of payment of tax i.e. in this case is 20.12.2019.
- The appellant argued that they had inadvertently filed their SEZ supplies as Export supplies and their refund got stuck in icegate, but the time limit of two years is sufficient to rectify the same if found necessary and file refund claim within stipulated time limit. Therefore, the refund claim is liable for rejection on the ground of limitation.

2(iii). Being aggrieved with the *impugned order* dated 19.04.2023 the appellant has preferred the present appeal on 19.05.2023. In the appeal memo the appellant has submitted that -

- they were engaged in manufacture and sale of Diesel Gensets (DG sets). In the month of November 2017, the Appellant had supplied DG sets to

M/s. Intas Pharmaceuticals Ltd, Pharmez Plant, situated at SEZ area, with payment of IGST amounting to Rs. 21,55,130/- by raising 4 invoices.

- *Due to an inadvertent error, they shown the supply of goods to SEZ as Export of goods out India. Due to this error, the refund for the period November 2017 has been stuck with the ICEGATE. Therefore, they have filed the refund application on 10.03.2021.*
- *That the relevant date shall not be applicable in the present case as the definition of relevant date was amended by the finance Act, 2022 and before that the limit is not prescribed with respect to refund of tax paid in case of supply made to the SEZ unit. The relevant date for claiming refund of tax paid on zero rated supply to a SEZ unit shall be the due date for furnishing of return under Section 39 of such supplies. However, the said provision has not yet been notified by the legislature. Therefore, as on the date of filing the refund application, the relevant date is not prescribed with respect to the refund of tax paid in case of zero-rated supply to a SEZ unit.*
- *At the time of reporting the above invoices in Form GSTR-1 returns, due to an inadvertent error, the appellant shown the invoices as "Export out of India" instead of "Supply to SEZ". Due to this error, the refund of the appellant for the period November 2017 has been stuck with ICEGATE. Further they filed the manual refund application on the GSTN portal. This clarifies that the refund was not filed belated but the said was filed under the wrong heading and it is a trite law that refund claims were not time barred when the application filed with deficiencies. For this they reliance upon the case of *Repro India Ltd Vs CCE 2013(32) STR 617* wherein the tribunal has held that if it is not disputed that the appellant is situated in SEZ area, has paid the Service Tax and the goods are exported, denial of the refund claim to the appellant only on hyper-technicalities is not tenable in the eyes of law. Further, they reliance upon the case of *Repro India Ltd Vs CCE 2016(43) STR 203* wherein the tribunal relied upon the case of *Commissioner of Central Excise, Delhi-1 vs. Arya Export and Industries [2005(192) E.L.T. 89(Del)* and held that the refund claim cannot be denied merely on the ground that the same was not filed in the prescribed form.*
- *In view of the above, the appellant prayed the set aside the impugned order.*



Personal Haring:

3. Personal hearing in the present appeal was held on 07.08.2023 wherein Ms. Sanket Gupta, Advocate, authorized representative appeared on behalf of the Respondent. During personal hearing he has submitted the explanation to Section 54 of CGST Act regarding supplies to SEZ were inserted (Explanation ba as per Section 54(14)(2)) was inserted by Finance Act 2022 w.e.f. 01.10.2022. Therefore the relevant date start after amendment and prior to this there were no timeline applicable for supplies made to SEZ. Apart from the above they have taken upto issue with Jurisdiction Authority vide letter dated 10.03.2021 and also reiterated the written submission.

Discussion and Findings:

4(i). I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that the present appeal is filed to set aside the *impugned order* wherein the *adjudicating authority* has rejected the application for refund of IGST paid on account of Zero rated supply of finished goods amounting to Rs. 21,55,130/-. The grounds in appeal is that the appellant has filed refund claim for the month of November 2017 on 10.03.2021 i.e. after expiry of more than three years and 03 months from the relevant date (i.e. time barred) in view of Sub Section (1) of Section 54 of CGST Act, 2017.

4(ii). I find that the appellant were engaged in manufacture and sale of Diesel Gensets (DG sets). In the month of November 2017, the Appellant had supplied DG sets to M/s. Intas Pharmaceuticals Ltd, Pharmez Plant, situated at SEZ area, with payment of IGST amounting to Rs. 21,55,130/- by raising 4 invoices, accordingly refund application had been filed. Due to an inadvertent error, they shown the supply of goods to SEZ as Export of goods out India. Due to this error, the refund for the period November 2017 has been stuck with the ICEGATE. Therefore, they have filed the refund application on 10.03.2021 in prescribed format RFD-01. However the date of payment is 21.12.2017. However, the appellant filed the refund application after expiry of more than three years and 03 months.



4(iii). Further, I find that the appellant is contended that before 01.10.2022 i.e. insertion of sub section 54(14)(2)(ba) there is no relevant date prescribed for filing of refund in case of SEZ supplies. In view of above, I refer to provisions of CGST Act, 2017 relating to subject case which is as under :

Section 54:

(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 the return furnished under section 39 in such manner as may be prescribed.

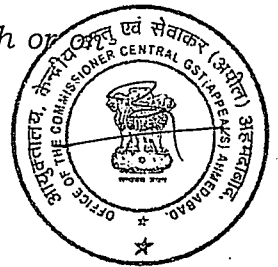
.....

(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 inputs or input services used in making such zero-rated supplies;

(b) refund of unutilised input tax credit under sub-section (3);"

.....



(14) *Notwithstanding anything contained in this section, no refund under subsection (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.*

Explanation.- For the purposes of this section, -

(1) "refund" includes 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, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) "relevant date" means-

.....

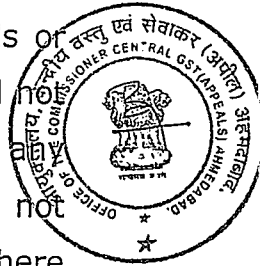
(ba) *in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under "section 39" in respect of such supplies;]*

.....

(h) *in any other case, the date of payment of tax.*

Further, I find that there is a clear provision in above referred Section 54(14)(2)(h) in any other case, the relevant date to file refund claim will be the date of payment of tax. Therefore, it is clear that the relevant date is, date of payment of tax, which in this case is 21.12.2017 and the application filed before competent authority is 10.03.2021. Accordingly, the appellant taken more than three years and 03 months in filing the refund application, whereas the due date of filing of refund application is 20.12.2019. Therefore, the refund is filed beyond the time limit prescribed to file refund application.

4(iv). Further I find that the adjudicating authority has processed the refund claim in light of Section 54 of CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017 by following the principle of Natural Justice. The appellant submitted in their reply to SCN that before 01.10.2022 (amendment made in vide Notification No. 18/2022-CT dated 28.09.2022), the provisions for relevant date to file refund claim in case of zero rated supply of goods or service or both to SEZ developer or unit is not there thus their claim will not be hit by limitation. In this regard, I find that provisions for relevant date in other category is always there as section 54(14)(2)(h) for the cases not mentioned separately. Therefore I find that contention of appellant that there is no limitation for filing of refund in case of supply to SEZ is not there before 01.10.2022 is factually incorrect. Therefore I find that the claim is to be filed by the appellant on or before expiry of two years from the date of payment of tax i.e. 21.12.2017 as per the provision of Section 54(1) of CGST Act, 2017.



4(iv). For this the appellant reliance upon the case of *Repro India Ltd Vs CCE 2013(32) STR 617* wherein the tribunal has held that if it is not disputed that the appellant is situated in SEZ area, has paid the Service Tax and the goods are exported, denial of the refund claim to the appellant only on hyper-technicalities is not tenable in the eyes of law. Further, they reliance upon the case of *Repro India Ltd Vs CCE 2016(43) STR 203* wherein the tribunal relied upon the case of *Commissioner of Central Excise, Delhi-1 vs. Arya Export and Industries [2005(192) E.L.T. 89(Del)]* and held that the refund claim cannot be denied merely on the ground that the same was not filed in the prescribed form. However, in the present case, I find that the facts and ground of statement of present case are totally different to the

cases appellant relied upon. In the instant case the refund was denied not on technicalities or not filed in proper form. Here the refund claim was denied on time limitation as prescribed under Section 54(1) of CGST Act, 2017. Thus the case laws cited are not relevant.

5. In view of the above discussions, I do not find any force in the contentions of the 'Appellant. Accordingly, I find that the *impugned order* passed by the *adjudicating authority* is legal and proper and as per the provisions of GST law. Consequently, I do not find any reason to interfere with the decision taken by the "Adjudicating Authority" vide "Impugned Order". Accordingly, I upheld the "Impugned Order" and reject the appeal filed by the 'Appellant.

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.

Asawari
18/08/2023
(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: 18.08.2023

Attested

AS
(Sanjeev Kumar)
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

M/s Supernova Engineers Limited,
F-2, 1st Floor, Sapath Hexa,
Opposite Gujarat High Court,
SG Highway, Ahmedabad-380060.

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., Ahmedabad- Gandhinagar Commissionerate.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-Kadi, Gandhinagar.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

