



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  
 07926305065- टेलिफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2/GST/88,89&91/GNR/19-20/14659 TO 14664
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP-JC-08 to 10-2019-20  
 दिनांक Date : 27-03-2020 जारी करने की तारीख Date of Issue 08/06/2020
- श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित  
 Passed by Shri. Mukesh Rathor, Joint.Commissioner (Appeals)
- ग Arising out of Order-in-Original No 89&90/GNR/RF/19-20 दिनांक: 23.12.2019 and  
 117/GNR/RF/19-20 दिनांक: 20, issued by Assistant Commissioner, Div-Gandhinagar, Central Tax,  
 Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
 AGC Network Ltd  
 Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

**Revision application to Government of India :**

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।
- (i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :
- (ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।
- (ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.
- (b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

... 1 ...



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-

Under Section 112 of CGST act 2017 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appropriate authority.



**ORDER IN APPEAL**

M/s. AGC Networks Ltd., A/78/4/3 Gandhinagar Electronics Estate, GIDC, Sector-25, Gandhinagar-382016 (*hereinafter referred to as 'appellant'*) has filed the three appeals against the below mentioned Order-In-Originals: (*hereinafter referred to as 'impugned orders'*) passed by the Deputy/Assistant Commissioner, CGST & C.Ex., Gandhinagar Division, Gandhinagar (*hereinafter referred to as 'adjudicating authority'*):

Sr. No.	OIO No.	Dated	Amount of Refund under dispute (in INR)
1	89/GNR/RF/19-20	23.12.2019	377560/-
2	90/GNR/RF/19-20	23.12.2019	2479059/-
3	117/GNR/RF/19-20	25.02.2020	6670302/-

Since the issue involved in all three appeals are common, I take up for disposal by a common order.

2. The brief facts of all the three appeals, are that the appellant, having G.S.T.I.N 24AACT3992M1ZX, have filed three refund claims of accumulated ITC under the category "Supply to SEZ Unit/SEZ Developer with payment of tax" on GSTN portal under section 54 of the CGST Act, 2017. On scrutiny of the same adjudicating authority has find that, the applications were made without the other required documents, hence deficiency memos issued to the appellant in all the three refund claims. The applicant has submitted documents in reply of all three deficiency memos. The details of amount of refund, filing date, period for which refund claimed by appellant, date of issue of deficiency memos by the adjudicating authority and date of reply of deficiency memo submitted by applicant mentioned as under:

Sr. N.	Amount of Refund claimfiled in the GST Portal: (INR)	Refund application reference No.(ARN)	Dated:	Period for which refund claimed	Date of issue of deficiency memos by the adjudicating authority:	Date of Reply of deficiency memo/ submission of rectified claim by applicant:
1	377560/-	AC240717040984T	13.06.2019	July, 2017	25.06.2019	22.10.2019
2	2479059/-	AA2408170103984	13.06.2019	August, 2017	25.06.2019	05.11.2019
3	6670302/-	AA2409170286241	13.06.2019	September, 2017	25.06.2019	16.01.2020

The adjudicating authority, "As per section 54 of the CGST Act, 2017, an application for refund has to be filed before the expiry of two years from the relevant date and as per Circular No. 59/33/2018-GST dated 04.09.2018, every application after issuance of a deficiency memo is to be treated as fresh application", find that all three applications filed by the applicant are after the expiry of two years from the relevant date. Hence notice for rejection of the subject claims were issued in Form GST-RFD-08 (under Rule 92(3) of CGST Act, 2017. The adjudicating authority vide above mentioned impugned orders has rejected



all the above mentioned refund claims due to time barred under the provision of sub section 5 of Section 54 of the CGST Act, 2017.

3. Being aggrieved, the appellant has filed the present appeals before me on the ground that, the all the refund claims have been filed in GST RFD -01 are within the time bar i.e. before the 02-years and reply of deficiency memo which was filed after the 02-years is only the rectification of the already filed refund claim and not considered as a fresh claim. In support of their submission, the applicant relied on following case laws and circulars:

-Case Laws:

- I. Vijay Commercial C-operative Bank 2019(25), GSTN447.
- II. LG Electricals India 2017 (349) ELT 145.
- III. EI Dupont India 2015 (330) ELT 405.
- IV. Shasun Pharmaceutical 2013 (291) ELT 189.
- V. Indian Oil Corporation 2010 (256) ELT 232
- VI. Hamdard Laboratories 2016 (333) ELT 193.

-Circulars:

- i. Circular no. 70/44/2018 dated 26.10.2018 and Circular no. 79/53/2018-GST dated 31.12.2018.

4. A personal hearing in the matter was held on 16.03.2020. Shri Amal P. Dave, Advocate and Shri Pankaj Sharma, appeared before me on behalf of the appellant and reiterated the grounds of appeal.

5. I have gone through the facts of the case and submissions made in the appeal memorandum. The limited point to be decided is whether the refund claim filed by the applicant is time barred or not.

6. Before going to decide the case, I want to produce the relevant part of, chapter XI of Rule 54 of the CGST Rules, 2017 for Refund:

**Refund of tax. 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.

**:The relevant part of circular no. 59/33/2018 dated 04.09.2018 (point 7 Status of refund claim after issuance of deficiency memo):**

**7.1 Rule 90(3) of the CGST Rules provides that:**

where any deficiencies in the application for refund are noticed, the proper officer shall communicate the deficiencies to the claimant in FORM GST RFD-03, requiring him to file a fresh refund application after rectification of such deficiencies. Further, rule 93(1) of the CGST Rules provides that where any deficiencies have been communicated under rule 90(3), the amount debited under rule 89 (3) shall be re-credited to the electronic credit ledger. Therefore, the intent of the law is very clear that in case a deficiency memo in FORM GST RFD-03 has been issued, the refund claim will have to be filed afresh.

**:The relevant part of circular no. 79/53/2018-GST dated 31.12.2018 [para 2(f)]:**

“ It has already been clarified vide Circular No. 70/44/2018-GST dated 26.10.2018 that after issuance of a deficiency memo, taxpayers would be required to submit the rectified refund application under the earlier Application Reference Number (ARN) only. It further clarified that the rectified application, which is to be treated as a fresh refund application, will be submitted manually in the office of the jurisdictional proper officer”.

7. From the above, it is very crystal clear that, the date of filling of any refund application is before the expiry of two years from the relevant date and where any deficiencies in the application for refund are noticed, and in case of deficiency memo issued, the refund claim will have to be filed afresh. I also find that, all case laws cited by the applicant are before the GST era, hence, no need to discuss the same in present appeals. Further I also find that, vital aspects of clarification of Circular No. 70/44/2018 dated 26.10.2018 and Circular No. 79/53/2018-GST dated 31.12.2018, always maintains that, after the issuance of a deficiency memo, the compliance of the deficiency memo shall be treated as fresh application, even though it allowed to be filed with the same ARN which was generated at the time of filling initial application. Therefore, I do not find any reason to interfere in the impugned orders.

8. In view of above discussions, I uphold the all three impugned orders passed by the adjudicating authority and reject the appeal filed by the appellant.

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

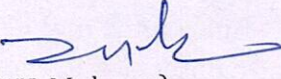
9. The appeals filed by the appellants stand disposed of in above terms.

(मुकेश राठौर)

संयुक्त आयुक्त (अपील्स)

Date : 27.03.2020

Attested

  
(V.V. Mohnan)

Superintendent(Appeals),  
Central Tax, Ahmedabad



To,

M/s. AGC Networks ltd., A/78/4/3,

Gandhinagar Electronics Estate,

GIDC, Sector-25, Gandhinagar-382016 .

Copy to:

- (1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- (2) The Commissioner, Central GST, Gandhinagar.
- (3) The Deputy Commissioner, Central GST, Gandhinagar Division, Gandhinagar.
- (4) The Assistant Commissioner(RRA), Central GST, Gandhinagar.
- (5) The Asstt. Commissioner(System), Central GST HQ, Ahmedabad.  
(for uploading the OIA on website)
- ~~2(6)~~ Guard file
- (7) P.A. file.



