



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015

☎: 079-26305065

टैलेफैक्स : 079 - 26305136

Email- commrappl1-cexamd@nic.in



DIN20210164SW000094329D

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)2/North/Appeals/20-21
ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-JC-42/20-21**
दिनांक Date : **28.12.2020** जारी करने की तारीख Date of Issue : 22.01.2021

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathor, Joint. Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZP2404200247115** dated दिनांक: **13.04.2020** passed by Assistant/Deputy Commissioner, Central GST, Division-IV, Ahmedabad-North

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

Appellant- M/s G M Tea Packers Private Limited, Tulsi Tea, Bavla Sanand Higway, At Lodariyal Baval, Ahmedabad-382220.

Respondent- Assistant/Deputy Commissioner, Central GST, Division-IV, Ahmedabad-North

(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 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) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent 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.



ORDER-IN-APPEAL

This appeal has been filed by M/s G M Tea Packers Private Limited, Tulsi Tea, Bavla Sanand Highway, At Lodariyal, Bavla, Ahmedabad-382220 [hereinafter referred to as 'the appellant'] against Refund Rejection Order No. ZP2404200247115 dated 13.04.2020 [hereinafter referred to as 'impugned order'] passed by the Deputy Commissioner of CGST, Division-IV, Ahmedabad North [hereinafter referred to as 'adjudicating authority'].

2. Facts of the case, in brief, are that the appellant is registered under the Central Goods and Service Tax Act, 2017 vide GST registration number 24AAECG8999D2Z7. The appellant is engaged in the business of trading, processing, blending and packing of tea and its allied product under the name and style of GM Tea Packers Private Limited. The appellant has applied for refund, for the period July 2017 to March 2018, amounting to Rs. 13,82,342/- dated 29.02.2020 on account of ITC accumulated due to inverted tax structure. The appellant was issued a Show Cause Notice dated 17.03.2020 proposing to disallow the refund on the ground that the refund is time barred. The reply to the above mentioned Show Cause Notice was submitted on 07.04.2020. Vide the impugned order the Adjudicating Authority rejected the refund claim of the appellant on the grounds that "Claim filed after two years. Rejected under Section 54 of CGST Act as time barred as detailed in SCN".

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

- a. The refund claim filed is well within the time limit allowed to the appellant;
- b. The time limit must be considered for the law prevailing in the force during the said relevant period for which the refund was applied for and not the current prevailing law in force;
- c. Since, clubbing of refund of successive tax periods is allowed as per Circular No. 135/2020 and 125/44/2019 hence the refund claim filed is well within time limit;

4. Virtual Hearing in the case was fixed on 23.12.2020. Shri Ankit Parikh, Chartered Accountant attended hearing on behalf of the appellant and reiterated written submissions made earlier.

5. The appellant has relied on various case laws mentioned in their submissions.

6. I have carefully gone through the facts of the case on record, grounds of appeal and the submissions made by the appellant. The issue to be decided here is whether the appellant is eligible for refund under Section 54(3) of the CGST Act, 2017 as filed within the time limit prescribed in the Act. The relevant extract is reproduced verbatim:



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

(2) -----

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilized input tax credit at the end of any tax period:

Provided that no refund of unutilized input tax credit shall be allowed in cases other than-

(i) Zero rated supplies made without payment of tax

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies

Explanation: For the purposes of this section,–

(1) -----

(2) “relevant date” means—

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,–

(i) -----

(ii) -----

(iii) -----

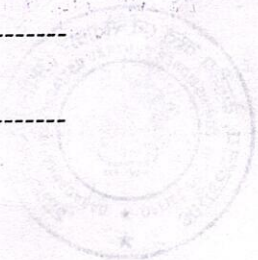
(b) -----

(c) -----

(i) -----

(ii) -----

(d) -----



(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;

(f) -----

(g) -----

(h) -----

The above section clearly deals with the refund of unutilized input tax credit in case where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is clearly stated in explanation 2(e) that the due date of filing of return is considered to be two years from the due date of furnishing of return under Section 39 of the CGST Act, 2017.

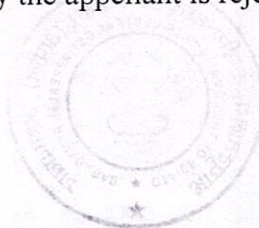
Further, it is observed that the above mentioned explanation 2(e) has been substituted w.e.f. 01.02.2019 in terms of the Notification 02/2019-Central Tax dated 29.01.2019 followed by Gazette issued on 29.08.2018 in respect of The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018). In the present case, the refund application was filed by the appellant on 29.02.2020 and accordingly it is clear that the time limit to file the said application will be as per the said provision only.

7. I also find that the due date to file the return i.e. monthly/quarterly under Section 39 of the CGST Act, 2017 is 20th of the following month. Further, I find that the annual return is to be filed under the provisions of Section 44 of the CGST Act, 2017 and hence, the due date of filing the annual return is not relevant for filing any refund claim in terms of explanation 2(e) to Section 54 of the CGST Act, 2017, as contended by the appellant in his submission.

8. As regard the contention of the appellant that they have made refund application by clubbing of successive tax periods as allowed by Circular No. 125/44/2019 and 135/2020 and hence it is filed within prescribed time limit, it is observed that the said Circulars allows to file refund application by clubbing successive periods however, it is silent on the aspect of due date to file the refund application. Accordingly, I find that the due date to file any refund application for a particular period would be considered strictly in terms of the explanation 2(e) of Section 54 of the CGST Act, 2017.

9. Further, I find that the appellant has filed the refund application after clubbing the period from July 2017 to March 2018 on 29.02.2020 and in absence of any month-wise bifurcated details produced by the appellant either to the adjudicating authority or during appeal proceedings, I do not find any force in the contention of the appellant that the said refund application has been filed within the prescribed time limit. Hence, I do not find any reason to interfere with the decision of the Adjudicating Authority.

10. In view of the discussions made above, the appeal filed by the appellant is rejected.



11. The appeals stand disposed off in above terms

Mukesh Rathore
28/12/2020
(MUKESH RATHORE)

Joint Commissioner,
CGST (Appeals), Ahmedabad.

Attested

Sanjay D.

Superintendent (Appeals)
Central GST, Ahmedabad



By Regd. Post A. D
M/s G M Tea Packers Private Limited,
Tulsi Tea, Bavla Sanand Highway, At Lodariyal, Bavla,
Ahmedabad-382220

Copy to :

1. The Chief Commissioner, CGST, Ahmedabad.
2. The Commissioner CGST, Ahmedabad-North.
3. The Deputy /Asstt. Commissioner, CGST, Division-IV, Ahmedabad-North.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-North.
5. Guard file
6. PA File

