



सत्यमेव जयते

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

Central GST, Appeal Commissionerate- Ahmedabad

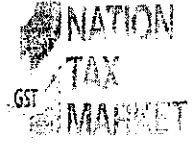
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015

☎ : 079-26305065

टैलेफैक्स : 079 - 26305136

Email- commrappl1-cexamd@nic.in



DIN20210464SW000038133A

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/246/2020-Appeal / 1007

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-01/2021-22**

दिनांक Date : **07.04.2021** जारी करने की तारीख Date of Issue : **08.04.2021**

श्री मोहित अग्रवाल अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mohit Agrawal, Additional Commissioner (Appeals)

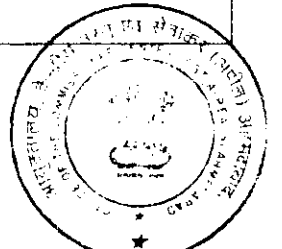
ग Arising out of Order-in-Original No ZW2406200034451 **dated** दिनांक: **03.06.2020** passed by Assistant/Deputy Commissioner, Central GST, Division-IV-Changodar, Ahmedabad-North

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

Appellant- M/s Sahjanand Poly Tex.

Respondent- Assistant/Deputy Commissioner, Central GST, Division-IV-Changodar, 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 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) 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 Sahjanand Poly Tex, Plot No. 405, paiki 2, Changodar Estate, Nr Shanker Ayurvedik Sharkhej Bavla Road, Changodar Ahmedabad-382213 [hereinafter referred to as 'the appellant'] against Refund Rejection Order No. ZW2406200034451 dated 03.06.2020 [hereinafter referred to as 'impugned order'] passed by the Deputy Commissioner of CGST, Division-IV-Changodar, 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 24ABOFS4952J1ZO. The appellant has applied for refund, for the period July 2017 to March 2018 on dated 22.05.2020 for amounting to Rs. 4,73,543/- on account of ITC accumulated due to inverted tax structure. Further, the Adjudicating Authority rejected the refund claim of the appellant vide impugned order with a remark that *"Neither any reply received nor anyone attended PH. As per available record it is found that claim is filed after the time limit prescribed under section 54 of CGST Act. I order to Reject the refund claim"*.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the ground that they have filed their application within time prescribe as per Notification No. 35 dated 3rd April 2020 and Notification No. 55 dated 27th June 2020 and Circular No. 137/07/2020 dated 13th April 2020. As per notification, deadline for applying refund is 30th June 2020.

4. Virtual Hearing in the case was fixed on 24.03.2021. Shri Rajeshkumar Jagdishbhai Patel, C.A., attended hearing on behalf of the appellant and reiterated submission made in appeal memorandum and requested to consider their appeal.

5. 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) -----

6. In view of the above, I find that the appellant has filed the refund on account of ITC accumulated due to inverted tax structure and it is clearly stated in explanation 2(e) that the due date of furnishing of return under Section 39 of the CGST Act, 2017 will be relevant date in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3) of Section 54 of CGST Act, 2017.

7. Further, I find that the appellant may make an application for refund of any tax and interest, if any, paid on such tax or any other amount paid by him **before the expiry of two years from the relevant date** in such form and manner as may be prescribed. In the present case, the refund application was filed by the appellant on 22.05.2020 for the months of July-March of F.Y. 2017-2018 and accordingly it is observed that the application for refund is not filed before the expiry of two years from the relevant date for the months of July-January of F.Y. 2017-2018 according to CBIC Notification No. 35/2020 – Central Tax dated 03-04-2020. Further I find that as per CBIC Notification No. 35/2020 –Central Tax dated 03-04-2020, the Government, on the recommendations of the Council, has notified, as under,-

(i) where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the **20th day of March, 2020 to the 29th day of June, 2020**, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 30th day of June, 2020, including for the purposes of—

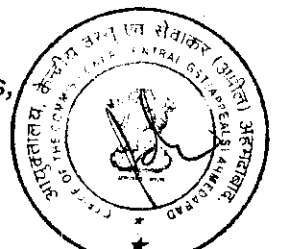
(a)-----

(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above;

Further, Notification No. 35/2020 –Central Tax dated 03-04-2020 has been amended vide **Notification No. 55/2020** –Central Tax dated 27-06-2020 which is reproduced below:

"In the said notification, in the first paragraph, in clause (i),--

(i) for the words, figures and letters "29th day of June, 2020", the words, figures and letters "30th day of August, 2020" shall be substituted;

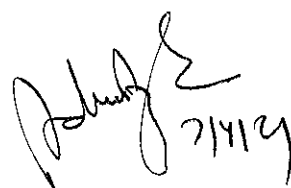


(ii) for the words, figures and letters "30th day of June, 2020", the words, figures and letters "**31st day of August, 2020**" shall be substituted"

8. In view of the above, it is crystal clear that the refund application has not filed within time limit in terms of the provisions of Section 54(1) of CGST Act, 2017. Further, I find that the appellant came with the plea that the time limit was prescribed vide Notification No. 35/2020 -Central Tax dated 03-04-2020 as amended vide Notification No. 55/2020 -Central Tax dated 27-06-2020 and vide Circular No. 137/07/2020 dated 13th April 2020. However, I find that the adjudicating authority has given opportunity for submission of documents through personal hearing in support of their claim. However, they have neither submitted any documents nor attended personal hearing as called by the adjudicating authority. The adjudicating authority, has therefore, rightly decided the matter based on records which were available with him. Further the appellant has not submitted sufficient documents to prove that the claim was filed within time limit prescribed. Further, I find that the appellant has filed the refund application after clubbing the period from July 2017 to March 2018 on 22.05.2020 and in absence of any month-wise bifurcated details produced by the appellant either to the adjudicating authority or during appeal proceedings, it would not be relevant to go into merit of the case being barred by limitation. Therefore, the decision of the adjudicating authority is proper & as per law. 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.

9. Accordingly, I do not find any reason to interfere with the decision taken by the adjudicating authority vide "impugned order". In view of above discussion, I reject the appeal filed by the appellant.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stand disposed off in above terms.



(MOHIT AGRAWAL)

Additional Commissioner,
CGST (Appeals), Ahmedabad.

Date: 07.04.2021



Attested



बी. एस. मीना/B. S. MEENA

Superintendent (Appeals)

Central GST, Ahmedabad

By Regd. Post A. D

M/s Sahjanand Poly Tex,

(GSTIN: 24ABOFS4952J1ZO)

Plot No. 405, paiki 2, Changodar Estate,

Nr Shanker Ayurvedik Sharkhej Bavla Road,

Changodar Ahmedabad-382213

Copy to :

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

