



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.
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रजिस्टर्ड डाक ए.डी. द्वारा

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फाइल संख्या : File No : GAPPL/ADC/GSTP/613 to 621/2020-Appeal.

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-02 to 10/2021-22**

दिनांक Date : **19.04.2021** जारी करने की तारीख Date of Issue : **21.04.2021**

श्री मोहित अग्रवाल अपर आयुक्त (अपील) द्वारा पारित

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

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Arising out of following Order-in-Original Nos, All passed by Assistant/Deputy Commissioner, Central GST, Division-III, Ahmedabad-North:

Sr. No.	OIO/RFD-06 No.	Dated:
1	ZV2404200037371	03.04.2020
2	ZZ2404200037671	03.04.2020
3	ZP2404200037048	03.04.2020
4	ZZ2404200037515	03.04.2020
5	ZS2404200037604	03.04.2020
6	ZO2404200037415	03.04.2020
7	ZN2404200037560	03.04.2020
8	ZN2404200037726	03.04.2020
9	ZQ2404200037160	03.04.2020

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

Appellant- M/s Vedanta Limited-Cairn Oil and Gas Division, Viramgam Terminal, Dhangadhar, Viramgam, Ahmedabad-382120.

Respondent- Assistant/Deputy Commissioner, Central GST, Division-III, 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.

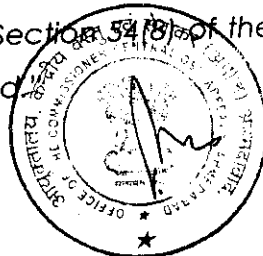


ORDER IN APPEAL

M/s. Vedanta limited-Cairn Oil and Gas Division, Viramgam Terminal, Dhangadhra, Viramgam, Ahmedabad-382120 (hereinafter referred to as the 'appellant') have filed the present nine appeals detailed below against the Orders-in-Original (hereinafter referred to as 'impugned orders') passed by the Deputy Commissioner, Central CST & Central Excise, Division-III, Ahmedabad-North (hereinafter referred to as 'adjudicating authority') in the matter of refund claims:

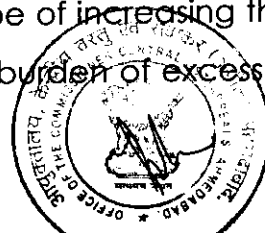
Sr. No.	Appeal No.	OIO /RFD-06 No.	OIO Date	Amount of dispute(₹)
1	GAPPL/ADC/GSTP/613/2020	ZV2404200037371	03.04.2020	1030681
2	GAPPL/ADC/GSTP/614/2020	ZZ2404200037671	03.04.2020	1016962
3	GAPPL/ADC/GSTP/615/2020	ZP2404200037048	03.04.2020	999086
4	GAPPL/ADC/GSTP/616/2020	ZZ2404200037515	03.04.2020	443881
5	GAPPL/ADC/GSTP/617/2020	ZS2404200037604	03.04.2020	932451
6	GAPPL/ADC/GSTP/618/2020	ZO2404200037415	03.04.2020	1005116
7	GAPPL/ADC/GSTP/619/2020	ZN2404200037560	03.04.2020	962437
8	GAPPL/ADC/GSTP/620/2020	ZN2404200037726	03.04.2020	971294
9	GAPPL/ADC/GSTP/621/2020	ZQ2404200037160	03.04.2020	975148

2. The facts of the cases, in brief, are that the appellant is engaged in exploration and production of crude oil and natural gas having GSTIN in Gujarat for the block RJ-ON-90/1. The appellant hired Anchor Handling Towing Cum Supply vessel (AHTH) "MV Poorna" from a supplier M/s. Global Offshore Service Ltd (GOSL) to support the operations including maintenance and inspection, tanker operations and oil spill response who raised invoices on the appellant for such rental services. It is the case of the appellant that while charging GST on taxable value of supply, the above supplier M/s. GOSL charged higher rate of 18% instead of 5%, and hence the appellant in the capacity of service recipient filed refund application under the provisions of Section 54 of the Central Goods and Service Tax Act, 2017 claiming refund of such excess tax of 13% (i.e. 18%-5%) paid by them. The adjudicating authority issued show cause notices stating that the refund claim were liable for rejection for the reasons that refund claim pertains to classification issue and applicability of rate of GST on supply whether 18% or 12% or 5% which can be decided by jurisdictional officer of the supplier and should be dealt at supplier's end. The refund claims were, then after, rejected under impugned orders (RFD-06) with the remarks "No reply received and no one appeared. Therefore, I proceed to decide the refund claim based on record. The refund claim does not fall under any provisions of Section 54(8) of the CGST Act 2017, as detailed SCN. Therefore, refund claim is rejected."



3. Being aggrieved, the appellant filed these appeals against the rejection of the refund claims, on the grounds *inter alia* mentioning that since the Respondent failed to accord an opportunity to present their case before the adjudicating authority, the principle of natural justice has not been followed; that the adjudicating authority failed to take into account the legislative changes in respect of time limit for various aspects such as filing of reply, appeal, passing of order etc was relaxed upto 30.06.2020 by way of Notification No.35/2020 CT dated 03.04.2020 and further extended to 31.08.2020 vide Notification No.55/2020 CT dated 27.06.2020 and hence 15 days time limit for response to show cause notices were not applicable ; that rejection of refund without discussing and providing specific findings on non-applicability of Section 54(8) of the CGT Act,2017 is against the principle of natural justice. They cited case laws Falcon Air Cargo an Travels (P) Ltd v/s UOI 2002(140) ELT 8(Del) and AL Saif International v/s UOI 2010(260) ELT 27(Cal).

3.1 It is further argued that the SCN proposing to deny the refund was based on the reason that the issue pertains to classification of service which must be decided by jurisdictional officer of the supplier whereas impugned orders rejected refund on a new ground that there was no provision under section 54(8) of the CGST Act, 2017 to process the refund. Thus the adjudicating authority travelled beyond allegations in the SCN; As per section 54(1) of the CGST Act,2017 "any person" makes no difference between a supplier or a recipient and the only condition which needs to be satisfied is the person has essentially borne the incidence of tax, therefore, the appellant as a recipient of supply has borne the tax is eligible to file refund claim; they relied upon chapter 34 "Refund under GST" of compilation of 51 GST Flyers dated 01.01.2018 issued by CBIC and literature titled "Goods and Service Tax –Concept and Status" issued by CBIC (as on 01.08.2019). For this argument, they cited various case laws including Mafatlal Industries Limited v/s UOI reported at 1997(89) ELT 247(SC), Indian farmers Fertilizer Co-op Ltd v/s CCE Meerut-II 201435) STR 422(Tri.Del), Ranjeet Singh Chaudhary v/s UOI 2018(15) GSTL 192(Guj) and Jindal Steel & Power Ltd v/s CCE Rajpur 2016(42) STR 694(Tri-Del) etc. They argued that since they are engaged in the sale of petroleum crude and natural gas, which is not chargeable to GST, they were unable to claim ITC of excess tax collected by GOSL and that selling price is based on international market price, there is no scope of increasing the price when excess tax is wrongly charged and thus entire burden of excess tax has

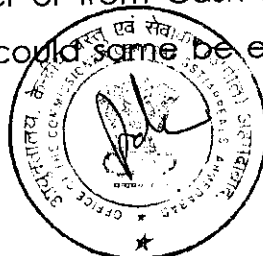


been borne by the appellant and incidence of tax has not been passed on by the appellant, the same was evident from the certificate issued by chartered accountant. On the issue of grounds of jurisdictional matter, they argued that the adjudicating authority failed to appreciate that the burden of excess tax has been borne by the appellant, it was not administratively possible for the assessee to file refund application in other jurisdiction on GSTN portal and that it is unjust to reject the claim on this ground. They further contested that in term of entry 17(viii) of Notification No.8/2017 Integrated Tax(Rate), the rental service of support vessel from GOSL falls under Heading 9973 taxable @ 5% GST which was inadvertently classified by GOSL under heading 9966 at entry No.10(iii) and wrongly charged higher GST rate @18%. They prayed to set aside the impugned order and requested the matter to be remanded back to the adjudicating authority.

4. In the virtual personal hearing held 01.04.2021, Shri Rahul Khurana and Ms. Shaifali Arora, advocate appeared on behalf of the appellant and reiterated the submissions made in appeal memorandum and requested to consider their appeal.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and written submissions made by the respondents. I find that the issue to be decided in the instant cases is whether in term of Section 54 of the Central Goods and Service Tax Act, 2017, the refund claims in respect of excess service tax paid by the appellant as recipient of services have been rightly rejected or otherwise?

6. I find that the appellant has contested that the service of support vessel provided by M/s. Global Offshore Service Ltd (GOSL) falls under Heading 9973 taxable @ 5% GST which was inadvertently classified by the said supplier under heading 9966 and wrongly charged GST at higher rate of 18 %. However, no documentary evidences in support of such arguments have been submitted by the appellant. Furthermore, no evidence showing the suppliers' intention or affirmation on such improper classification has been placed by the appellant. It is also not forthcoming as to for what purpose or intention the supplier choose to pay tax at higher rate when lower one were available to them ? Also, there are no submissions regarding as to whether the supplier paid tax from Electronic Credit Ledger or from Cash Ledger ? Further, if amount paid by the supplier in ITC how could same be encashed



subsequently by recipient ? In the instant case, the issue of improper classification has been raised by the recipient of service i.e the appellant only and not by the supplier and hence even if genuineness of the classification if succeed as claimed by the appellant, it is not comprehensible as to why the supplier refrain from claiming refund of tax paid in excess, if any? Also there appears no evidence in the appeal memorandum clarifying the status of the supplier as to whether they had lodged any such claim with the department for refund of such excess tax paid or shall not claim in future.

7. It is observed that the appeals against Orders-In-Original (RFD-06) dated 03.04.2020 have been preferred by the appellant on 23.11.2020 i. e after more than seven months. Thus, the appeals are not filed within the time limit of three months as prescribed under Section 107 of the CGST Act, 2017. In the Statement of Facts (GST APL-01), it is mentioned by the appellant that there was no option available in the GST portal to file an appeal and hence by email dated 30.09.2020 to appellate authority Ahmedabad-II, they reserved their rights to file detail submissions later. In this context, I observe that in such cases of delay in filling appeal, the Appellate Authority, in term of Section 107(4) of the CGST Act, 2017, on being satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, may allow it to be presented within a **further period of one month**. In the instant cases, the appeals are not presented within such further period of one month but have been abnormally delayed and filed on 23.11.2020. Therefore, the period of condonation of delay is not within my competency limit of one month as provided in the law. The appellant has also made a submission in the Statement of Facts (GST APL-01) that since there was no option available in the GST portal to file an appeal and hence by email dated 30.09.2020 to Appellate Authority Ahmedabad-II, they requested to reserve their right to file detail submissions later. In this context, I find that Section 107(4) of the CGST Act, 2017 does not allow the first appellate authority to condone the delay beyond one month. Furthermore, even I consider extended time limit available under Notification No.35/2020 Central Tax dated 03.04.2020 and Noti No.55/2020 Central Tax dated 27.06.2020 on account of spread of pandemic COVID-19, the total period from 20.03.2020 to 31.08.2020 have been protected under said notifications. Since the appeals were not filled before the expiry of such further extended date i.e. before 31.08.2020, the relaxations provided under both the said notification jointly, cannot help to the delay in present appeals. Therefore, the plea of the



appellant on the issue of non compliance of the time limit is not genuine. All the nine appeal above are accordingly rejected for non compliance of time limit mandated under Section 107 of the Central Goods and Service Tax Act 2017.

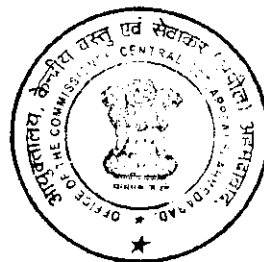
8. The appeals filed by the appellant stand disposed of in above terms.
अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

Mohit Agarwal
19/11/21

(Mohit Agarwal)
Additional Commissioner,
CGST(Appeals), Ahmedabad.
Date:

Attested

Atul Kumar B. Amin
(Atulkumar B. Amin)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D./Speed Post

To,
M/s. Vedanta limited-Cairn Oil and Gas Division,
Viramgam Terminal, Dhangadhra,
Viramgam,Ahmedabad-382120
GSTN: 24AACCS7101B3Z0

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST, Appeals, Ahmedabad.
3. The Commissioner of Central Tax, Ahmedabad-North.
4. The Addl./Joint Commissioner, Central Tax (System), Ahmedabad-North.
5. The Asstt./Deputy Commissioner, Central Tax, Division-III, Sanand, Ahd-North.
6. Guard File
7. P.A. File