



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

क फाइल संख्या : File No : GAPPL/ADC/GSTP/404/2020-Appeal- O/o COMMR-CGST-APPL-AHMEDABAD / 2133 To 2139

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-22/2021-22**
दिनांक Date : **13.07.2021** जारी करने की तारीख Date of Issue : **13.07.2021**

श्री मोहित अग्रवाल अपर आयुक्त (अपीलस) द्वारा पारित
Passed by Shri. Shri. Mohit Agrawal, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No RFD-06 No. ZT2407200243507 dated 17.07.2020
passed by Assistant Commissioner, CGST & C.Ex Division-III, Ahmedabad North

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

Appellant- M/s Grupo Antolin India Pvt. Ltd.

Respondent- Assistant Commissioner, CGST & C.Ex., 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 Grupo Antolin India Private Limited (GSTIN 24AAACA6730G1Z3), Plot No. 30 P, Sanand Maliya State Highway, Village Khoda, Dist.: Khoda, Gujarat-382170 (hereinafter referred to as 'appellant') has filed the present appeal against Order-In-Original no. ZT2407200243507 dated 17.07.2020: (hereinafter referred to as 'impugned order') passed by the Deputy/Assistant Commissioner, CGST & C.Ex., Division III Ahmedabad North (hereinafter referred to as 'adjudicating authority').

2. The brief facts of the case, in brief, are that the appellant, having GSTIN 24AAACA6730G1Z3 has filed a Refund Application for "EXCESS PAYMENT OF TAX" for the Period JULY 2017 -MARCH 2018 on 22-03.2020 for Rs. 12,63,464/- observed vide ARN No. AA240620040817F. On scrutiny of the same, adjudicating authority observed that, the application was made without the supporting documents. Hence deficiency memo was issued to the appellant on 07.04.2020. The appellant submitted his documents in reply to the deficiency memo and filed fresh Refund application on 21st April 2020. Again on scrutiny of refund claim filed by the appellant, deficiency memo was issued by adjudicating authority on 25th April 2020 stating that, there was mismatch in summary given & refund claim and that supporting documents were not attached i.e Invoice/other documents & Certificate under Rule 89(2)(m) were not attached. After compliance of deficiency memo, the appellant submitted refund claim on 18th June 2020. Further The adjudicating authority, found that refund claim filed by the applicant was 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 on 02nd July 2020. The adjudicating authority vide above mentioned impugned order rejected the refund claim filed by the appellant on account of time bar under the provision of Section 54 (1) of the CGST Act, 2017.

3. Being aggrieved, the appellant has filed the present appeals before me on the ground that:

- During the course of GST Audit, it was observed that, they have inadvertently Excess Paid GST amounting to Rs.13,60,733/- (CGSTRs. 6,12,895/- SGST 6,12,895/- and IGST Rs.1,34,943/-) due to clerical mistakes, calculation errors in GSTR 3B during the period July 2017 to March 2018.

- At the initial stage of GST, GSTR 3-B was required to be filed before filing of GSTR 1. GSTR 3B was filed before filing of GSTR 1 and as such the same has resulted into excess payment of tax and the same was identified after preparation of Annual Return and Reconciliation Statement.

- Considering the Challenges involved in the initial period of GST, government has



introduced Monthly summarized GSTR 3-B Return, for Payment of GST Liability. However GSTR 1 is the return, which contains detailed information of outward supply at Invoice level quantifying the total GST Liability.

- Amount mentioned in the refund claim is the deposit of amount and not a payment of tax as this amount has been paid inadvertently by them as there was no underlying GST Liability in the month of September 2018 and November 2018, and same is not against any supply hence not forming part of the GSTR-1 Return. Hence they contended that, that amount of Rs. 12,63,464/- (CGST Rs. 5,95,999/SGST Rs. 5,95,999/- and IGST Rs. 71,466/-) is deposit of amount made inadvertently. Hence they contended that the time period of 02 years is not applicable as it is not a tax payment and does not fall within the ambit of Sec 54 which prescribes time lime of 02- years from relevant date.

- The refund claim filed has arisen out of filing of Annual Return, which is under self-assessment and has resulted into refund and as such the limitation period specified in section 54 is not directory and not mandatory as the work "may" is used in sub-section (1) of Section 54 and not "shall".

- In support of their submission, the applicant relied on case law Hourable Supreme Court Judgment in the case of Mafatlal Industries (Mafatlal Industries Ltd. V/s Union of India etc. on 19 December 1996), wherein the Apex court has given the verdict in favour of the assessee in respect of wrong payment of tax wherein it has been held.

4. A personal hearing in the matter was held on 10.06.2021. Shri Himanshu Mehta, Finance Manager of the Grupo Antolin India Pvt. Ltd., 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.

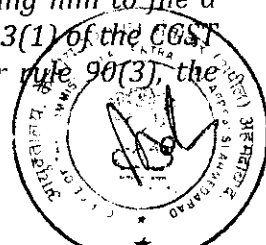
6. Before going to decide the case, I want to produce the relevant part of, chapter XI of Rule 54 of the CGST Rules, 2017 for Refund:

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 prior to 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, adjudicating authority has rightly decided the matter as the refund claim filled by the appellant pertains to excess payment of tax and date of payment of tax for September Month is 18.10.2017 and for November month is 21.12.2017. Hence, as per Section 54(1) of the CGST Act, 2017, the refund claim is required to be filed before expiry of two years from 18.10.2017 and not from due date of filling of annual return & reconciliation statement. The amount paid by the assessee can by no stretch of imagination be considered as deposit as claimed by them. The amount claimed by them as refund has admittedly by them been paid by them representing "tax" and not deposit. Therefore, the said case law relied upon by the appellant is not squarely applicable in instant case. Therefore, I do not find any reason to interfere in the impugned order.

8. In view of the above facts discussed hereinabove, I do not find any merit in the grounds raised by the appellant. Accordingly, I reject the appeal filed by the appellant and uphold the impugned order.

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

9. The appeal filed by the appellant stand disposed of in above terms.

Mohit Agrawal
15/7

Mohit Agrawal
(मोहित अग्रवाल)
अपर आयुक्त (अपील्स)

Date: .07.2021

Attested

(Atulkumar B Amin)

Superintendent(Appeals),

Central Tax, Ahmedabad



To, *

M/s Grupo Antolin India Private Limited (GSTIN 24AAACA6730G1Z3),
Plot No. 30 P, Sanand Maliya State Highway,
Village Khoda, Dist.: Khoda,
Gujarat-382170 .

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner(Appeals), CGST, Ahmedabad
3. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan,
Ashram Road, Ahmedabad.
4. The Commissioner of Central Tax, Ahmedabad-North.
5. Deputy Commissioner, CGST & C.Ex., Division-III, Ahmedabad North .
6. The Assistant Commissioner(RRA), Central GST, Ahmedabad North.
- ✓ 7. Guard file
8. P.A. file.

