



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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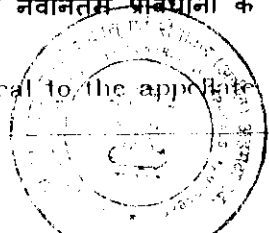


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DIN NO. : 20211064SW000000EA71

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/128/2020-APPEAL / 3876 703881
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-JC-44/2021-22 and 20.10.2021
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, संयुक्त आयुक्त अपील Shri Mihir Rayka, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	21.10.2021
(ङ)	Arising out of Order-in-Original No. ZV2404200472837 dated 28.04.2020 issued by Assistant Commissioner, Division - VII (S G Highway East), Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s CMS IT Services Private Limited (GSTIN - 24AAFCC7740P1Z9) Address :- Ansh Complex, Near Sorabji Compound, Ashram Road, Juna Vadaj, Ahmedabad-380013

(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.	
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्राधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .	



ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. CMS IT Services Private Limited, Ansh Complex, Near Sorabji Compound, Ashram Road, Juna Vadaj, Ahmedabad - 380013, Gujarat, (*hereinafter referred as 'appellant'*) has filed the present appeal against the Order No. ZV2404200472837 dated 28.04.2020 passed in the Form-GST-RFD-06 (*hereinafter referred as 'impugned order'*) rejecting refund of CGST - Rs.3,81,326/- and SGST - Rs.3,81,327/- total Rs.7,62,653/-, issued by the Assistant Commissioner of CGST & Central Excise, Division - VII - S G Highway East, Ahmedabad North Commissionerate (*hereinafter referred as 'adjudicating authority'*).

2(i). The *appellant* is holding GST Registration No.24AAFCC7740P1Z9. On 04.03.2020 vide ARN No.AA240320007818K, the *appellant* has filed a Refund claim of CGST - Rs.3,88,613/- and SGST - Rs.3,88,613/- total Rs.7,77,226/- for the period F.Y. 2017-18, on account of excess payment of Tax made in GSTR - 3B.

2(ii). Subsequently, a Show Cause Notice (*hereinafter referred as 'SCN'*) dated 10.04.2020, under Form RFD-08 was issued to the *appellant* proposing rejection of refund amounting Rs.7,77,226/- and for filing of reply to the said SCN within 15 days. Opportunities of personal hearing on 17.04.2020 also granted to the *appellant*. The *appellant* has stated in the appeal memo that reply to the SCN was filed by them on 24.04.2020 in the Form RFD-09. Consequently, '*the adjudicating authority*', vide the '*impugned order*', sanctioned the amount of Rs.,14,573/- and rejected the amount of Rs.7,62,653/- .

2(iii). Being aggrieved with the '*impugned order*', the '*appellant*' filed the present appeal on 24.08.2020 wherein, inter alia, stated that :

- (a) *through oversight / by mistake the credit notes issued during the year 2017-18 have not been reported in Monthly GSTR 3B Return. Accordingly, they have made excess payment of tax. Also made excess payment of tax because of invoices wrongly considered as Interstate transaction against Intra State as well as reduction in original invoice value;*
- (b) *all the above mistakes apparent in the GSTR 3B had been noticed while filing Annual Return for the F.Y.2017-18; and the same have been duly rectified in the Annual Return filed on 05.12.2019;*
- (c) *filed the refund claim for such excess payment for the period July-2017 to March-2018 on 04.03.2020 for amount of Rs.7,77,226/- (CGST 388613+ SGST 388613).*
- (d) *SCN was issued to them in Form RFD - 08 on 10.04.2020 proposing rejection of refund claim stating that "Dt. of tax paid, Documents viz. Invs. etc. required as proof that tax paid, CA Certificate that incidence of tax not*



passed on and whether excess tax paid in cash or credit needs to be complied with."

- (e) *inspite of detailed reply alongwith explanations and documents submitted on 24.04.2020 in form RFD - 09 the Ld. Assistant Commissioner has sanctioned refund of Rs.14,573/- and has rejected balance refund of Rs.7,62,653/- . However, the Ld. Assistant Commissioner has failed to provide the reasons of such rejection in the order RFD - 06.*
- (f) *the Ld. AC has erred in not complying with the principal of Natural Justice by not providing the reasons of rejection of refund claim in the order. In this regard the appellant has accordingly referred the following case laws :*
 - (i) Siemens Engineering and Manufacturing Co. of India Ltd. V. Union of India and another AIR 1976 SC 1785*
 - (ii) Assistant Commissioner, Commercial Tax Department V. Shukla & Brothers - 2020 TMI - 76374 - Supreme Court of India*
 - (iii) [2019] 110 taxmann.com 295 (Delhi) High Court of Delhi HCL Infosystems Ltd. V. Union of India.*

2(iv). The 'appellant' vide letter dated 24.04.2020 addressed to the 'adjudicating authority' had informed that the refund of excess payment of tax arises mainly on account of credit note issued to buyer due to sales return.

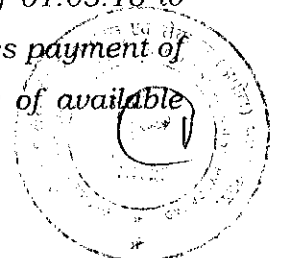
Personal Hearing :

3. Personal Hearing in the matter was through virtual mode held on 11.10.2021. Shri Keval Shah, Chartered Accountant, appeared on behalf of the 'appellant' and re-iterated the written submissions made in the appeal memorandum of the said appeal in virtual mode.

Discussion and Findings :

4. Since, there is no such reasons mentioned in the 'impugned order', the Assistant / Deputy Commissioner, CGST, Division - VII, Ahmedabad North i.e. 'adjudicating authority' was asked to inform the reasons on the basis of which the refund claim was sanctioned / rejected. Accordingly, the Deputy Commissioner, CGST, Division - VII, Ahmedabad North vide letter F. No. CGST/A'bad North/Div.-VII/Appeal Misc/21-22/1289 dated 11.10.2021 informed the reasons. The same is mentioned in verbatim as under :

"M/s. CMS IT Services Private Limited, Ahmedabad had filed the online application Form GST RFD 01 on the common portal and hence, no physical documents were submitted along with refund application. On tracing the said application on the common portal, it is observed that M/s. CMS IT Services Private Limited filed RFD-01 application ARN No. AA240320007818K dated 04.03.2020 for the refund period of 01.03.18 to 31.03.18 for the amount of Rs.777226/- on the ground of Excess payment of the tax made in GSTR-3B for the FY 2017-18. After scrutiny of available



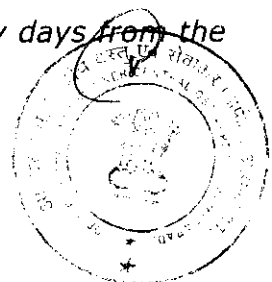
documents, SCN dated 14.04.2020 issued for the required documents for scrutiny of refund i.e. Date on which tax documents to substantiate the claim of excess payment done, date on which payment made and invoices etc. After perusal of reply received of the said SCN dated 24.04.2020 it is found that Credit note issued for the month of Aug-2017 and Sept-2017 total tax amounting of Rs.753070/- being time barred and only Credit note issued for the Month of Feb-2018 tax amounting of Rs.24156/- was eligible for refund. Further, it is also noticed that those eligible Refund amount for Cash Rs.14573/- only and for Credit Rs.9583/-."

It is to be noticed that the GST portal did not have any module/facility to allow refund of Credit (if excess payment made in credit) during the period of this claim. Hence, the sanctioning authority has allowed refund of Rs.14753/- only and rejected refund of Rs.762653/- in the Order RFD-06.

5. I have carefully gone through the facts of the case available on records, submissions made by the appellant in the Appeal Memorandum as well as at the time of personal hearing and also gone through the letter dated 11.10.2021 of the Deputy Commissioner, CGST, Div. - VII, Ahmedabad North. I find that the *appellant's* main contention is that they have made excess payment of tax as they have issued credit notes in F.Y. 2017-18 in connection with mainly on account of sales return. Further, due to the reduction in Original Invoice Value as well as transaction considered Interstate instead of Intra State also made excess payment of tax. The *appellant's* main contention is that the above transactions resulted in excess payments being made by them by mistake and same were not considered in the monthly GSTR 3B returns. However, in Annual Return for the F. Y. 2017-18 filed on 05.12.2019 said mistakes have been rectified.

6(i). In the present issue, it is observed that the *appellant* has raised their contention that the impugned order has been passed by the adjudicating authority, without providing the reasons of rejection of refund claim and therefore, violated the principles of natural justice. It is observed from the records attached with the appeal memorandum that, a notice for rejection of application for refund in "FORM-GSTRFD-08" has been issued by the adjudicating authority stating the reason as 'Other' due to which the subject refund claim is liable for rejection and further, it was also directed to the *appellant* to furnish a reply to the notice within fifteen days from the date of service of the notice and the *appellant* was also directed to appear before the *adjudicating authority* on 17.04.2020 for personal hearing. In the aforesaid Notice a 'Remark' was mentioned as "DT. OF TAX PAID, DOCS. VIZ. INVS. ETC. REQD. AS PROOF THAT TAX PAID, CA CERT. THAT INCIDENCE OF TAX NOT PASSED ON & WHETHER EXCESS TAX PAID IN CASH OR CREDIT. PL. COMPLY."

6(ii). I also find that as per Section 54 (7) of the CGST Act, 2017, "The proper officer shall issue the order under sub-section (5) within sixty days from the



date of receipt of application complete in all respects." Further, the provisions of Rule 92 (3) of the CGST Rules, 2017 also provides that:

"Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed."

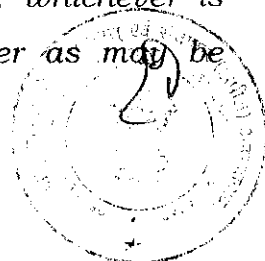
Accordingly, I find that the 'adjudicating authority' is also bound to process the refund claim and to issue the orders in a time bound manner, as prescribed under the provisions of Section 54 of the CGST Act, 2017 and Rule 92 of the CGST Rules, 2017. Hence, I do not find too much force in the said contention of the appellant that the principles of natural justice have not been followed by the 'adjudicating authority' while issuing the 'impugned order'.

7(i). Now, looking to the contention of the appellant that 'Credit notes' issued by them in 2017-18 and by mistake not reported in monthly GSTR 3B Returns which resulted into excess payment of tax, it is relevant to go through the compliance of the condition of Section 34 of the CGST Act, 2017. Therefore, it is pertinent to go through the legal provisions of Section 34 of the CGST Act, 2017 in order to analyze the issue in proper perspective. The provisions contained under Section 34 of the CGST Act, 2017 are re-produced below:

"34. Credit and debit notes -

(1) [Where one or more tax invoices have] been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient [one or more credit notes for supplies made in a financial year] containing such particulars as may be prescribed.

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:



Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person."

In terms of the above provisions of Section 34 of the CGST Act, 2017, I find that the credit note, issued if any, has to be declared in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier.

7(ii). In the present case, it is undisputed that the details of the credit notes were not furnished in the relevant GST return during 2017-18 and this fact is submitted by appellant in appeal memorandum also. Further, the *appellant* themselves accepted the fact that by mistake the said details have not been reported by them in the monthly GSTR 3B return. This is in violation of the provisions the Section 34 of the CGST Act, 2017.

8(i). Looking to the facts of the case I would like to confirm whether the refund claim filed by the *appellant* for refund of excess tax inadvertently paid as GST are hit by limitation as per provisions of Section 54 of the CGST Act, 2017 or not. The main argument advanced by the *appellant* in the matter is that during F.Y. 2017-18 the refund arises mainly on the ground of sales return for which they have raised credit notes but by mistake not reported in the monthly GST Returns.

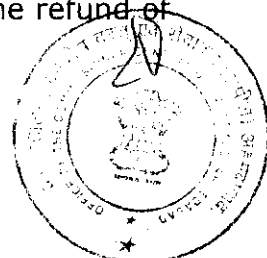
8(ii). Refund under the provisions of CGST Act, 2017 is governed by the provisions of Section 54 of the said Act. Sub-section (1) of the said Section 54 of the Act reads as under:

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:

8(iii). The form and manner for applying for refund under the above said section is prescribed under Rule 89 of the CGST Rules, 2017, relevant portion of which reads as under:

89. Application for refund of tax, interest, penalty, fees or any other amount.- (1) Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

8(iv). From the above provisions of the Act and the Rules, it is abundantly clear that provisions of Refund under CGST Act provides for refund of not only of tax, interest but also of any other amount paid. Therefore, the refund of



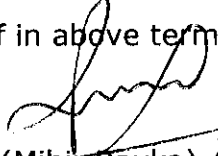
any amount paid under CGST Act, irrespective of the fact that whether it in the nature of tax or otherwise, would be governed by the said provisions of Section 54 of the CGST Act and the Rules made thereunder. When the refund of any amount paid is governed by provisions of Section 54 of the CGST Act, 2017 the limitation provided under the said statute would also applicable in all such cases. Therefore, the limitation prescribed under the said Section would be applicable to refund of amount paid, as in the present case.

8(v). In the appeals under consideration, the refund claims for the period F.Y. 2017-18 were filed on 04.03.2020 i.e. after the expiry of two years from the relevant date for the refund pertains to period upto February - 2018. In the present appeal, the appellant has produced the Annexure duly marked as "Transaction/Invoice on the basis of which Refund is claimed", on going through same I find that excess payment of tax is in respect of Invoices of August' 2017, September'2017 and February'2018. Therefore, the refund claims under dispute in the present case are to be held as hit by limitation for being filed after expiry of the period stipulated under the Statute.

9. In view of the above discussions, I do not find any merit in the contentions of the appellant on their claim of refund in the case under consideration and accordingly the appeal of the appellant is rejected

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


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


(Mihir Rayka) 20/10/21

Joint Commissioner (Appeals)

Date: 20.10.2021




(Dilip Jadav)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. CMS IT Services Private Limited, Ansh Complex,
Near Sorabji Compound, Ashram Road, Juna Vadaj,
Ahmedabad - 380013

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Commissioner, Central GST & C. Ex., Ahmedabad-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-VII - S G Highway East, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File