



सत्यमेव जयते

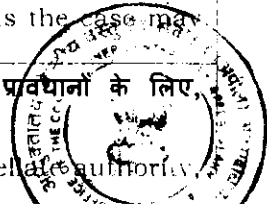
आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद-380015  
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DIN NO. : 20220164SW0000000969

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTD/25/2021-APPEAL / 5621 To 5626
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-87/2021-22 & 05.01.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त अपील Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	06.01.2022
(ङ)	Arising out of RFD-06 Order No. ZQ2410200055122 dated 06.10.2020 issued by Assistant/Deputy Commissioner, Division - II, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	The Assistant/Deputy Commissioner, CGST & C.Ex., Division-II (Naroda Road), Ahmedabad North, Address :- 3rd Floor, Sahajanand Arcade, 132 Ft. Road, Helmet Circle, Memnagar, Ahmedabad-380009
	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Perfect Solution & Hospitality Management (Legal Name - Varshaben Pareshkumar Lakhani) (GSTIN - 24ADVPL6976A1Z6) Address :- Block No. A, GF-1/A, Near City Gold Cinema, Pushpadeep Industrial Hub and Arcade, Nootan Mill Compound, Saraspur, Ahmedabad-380024

(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 प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



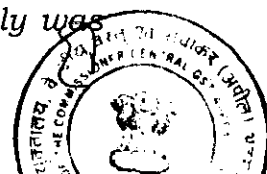
**ORDER-IN-APPEAL****Brief Facts of the Case :**

The following appeal has been filed by the Assistant Commissioner, CGST & C. Ex., Division - II, Ahmedabad North Commissionerate (hereinafter referred as '*appellant*' / '*department*') in terms of Review Order issued under Section 107(2) of the CGST Act, 2017 (hereinafter referred as '*the Act*') by the Reviewing Authority against RFD-06 Order (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, CGST & C. Ex., Division - II, Ahmedabad North (hereinafter referred as '*adjudicating authority*') in the case of **M/s. Perfect Solution & Hospitality Management (Legal Name - Varshaben Pareshkumar Lakhani)**, Block-A-GF-1/A, Nr. City Gold Cinema, Pushp Deep Industrial Hub and Arcade, Nootan Mill Compound, Saraspur, Ahmedabad - 380018 (hereinafter referred as '*Respondent*').

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date
GAPPL/ADC/GSTD/25/2021- APPEAL Dated 15.04.2021	02/2021-22 Dated 12.04.2021	ZQ2410200055122 Dated 06.10.2020

**2(i).** Brief facts of the case are that the '*Respondent*' holding GSTIN No. 24ADVPL6976A1Z6 had filed refund claim of Rs.34,236/- (Integrated Tax - 34236) on 27.08.2020 for the period from 01.11.2017 to 30.11.2017 under Section 54 of the CGST Act, 2017. The refund claim was preferred under Section 54 on account of Supplies made to SEZ Unit/SEZ Developer with payment of tax. The *adjudicating authority* has sanctioned the aforesaid refund claim vide '*impugned order*'.

**2(ii).** In the statement of facts the '*Department*' has submitted that "Refund application can be filed under GST within 2 years from the relevant date as per provisions of Section 54 of the CGST Act. Sub-section 54 (14) (2)(b) defines relevant date in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of goods, the date on which the return relating to such deemed export is furnished. It is observed that the said claimant had filed GSTR-3B return for the month of November'2017, where deemed export supply was



made on 18.12.2017. Thus they were required to file refund claim on or before 18.12.2019. They have filed refund claim on 27.08.2020. Thus there was delay in filing of refund claim".

**2(iii).** Further, in the statement of facts the 'Department' has submitted that "the relaxation of time limit in view of the spread of pandemic COVID-19, allowed by CBIC vide Notification No. 35/2020 - Central Tax dated 03.04.2020 and Notification No. 55/2020 - Central Tax dated 27.06.2020 will not be applicable in the present case, as relevant due date do not fall between 20<sup>th</sup> March, 2020 to 31<sup>st</sup> August, 2020."

**2(iv).** Considering the above facts the 'Department' has submitted that - "It thus appears that the adjudicating authority has sanctioned refund of Rs.34236/- to the claimant, without keeping in notice the provisions of Section 54 of the CGST Act, 2017 in relation to relevant date for filing refund claim."

**2(v).** In the grounds of appeal the Department has submitted that the impugned order is not legal and proper and requires to be set aside. The Department has further submitted that the Respondent has filed GSTR-3B return for the month of November-2017, where deemed export supply was made, on 18.12.2017, thus they were required to file refund claim on or before 18.12.2019 whereas, they have filed refund claim on 27.08.2020. Thus there was delay in filing of refund claim. In this regard the Department has referred the provisions of Section 54 [14(2)(b)] wherein relevant date is defines as that in case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed export is furnished.

**2(vi).** Considering the above facts the Department has submitted that the impugned order is not proper and legal and accordingly, makes prayer for relief as under :

- To set aside the *impugned order*.
- To pass an order directing to the original authority to recover the amount erroneously refunded to the claimant with interest
- To pass any other order(s) as deemed fit in the interest of justice.



**Personal Hearing :**

3. Personal Hearing in the matter was through virtual mode held on 23.12.2021. Shri Amitkumar Ajmera, CA was appeared on behalf of the 'Respondent' and stated that the refund amount has already been paid back to the department by them with interest.

**Discussion and Findings :**

4. I have carefully gone through the facts of the case available on records, submissions made by the 'Department' in the Appeal Memorandum. I find that the 'Respondent' has preferred refund claim of Rs.34236/- of Integrated Tax for the Period from 01.11.2017 to 30.11.2017 under Section 54 of the CGST Act, 2017. The refund claim was filed on account of supplies made to SEZ Unit/SEZ Developer with payment of tax and the *adjudicating authority* has sanctioned the said refund claim vide *impugned order*. However, the department has observed that the *adjudicating authority* without keeping in notice the provisions of Section 54 of the CGST Act, 2017 in relation to relevant date for filing refund claim, has passed the *impugned order*. The relevant provision is reproduced as under :

**\*Section 54. Refund of tax.-**

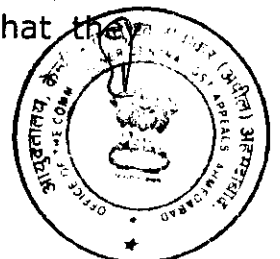
(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

14 (2) "relevant date" means-

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

In view of above, I find that the *Respondent* can make an application before the expiry of two years from the relevant date. In the present case, I find that that the *Respondent* has filed GSTR-3B return for the month of November-2017, where deemed export supply was made on 18.12.2017, thus in view of above provision they were required to file refund claim on or before 18.12.2019. However, I find that in the present case the refund claim was filed on 27.08.2020 which is time barred.

Further, I find that during the Personal Hearing the authorized representative of the Respondent has informed that they



have already paid back the refund amount to the Department with interest therefore, I find that the *Respondent* has accepted the view of the *department*.

5. In view of above discussions, I find that the *impugned order* is not legal and proper and therefore, require to be set aside. Accordingly, the appeal filed by the '*Department*' is allowed and set aside the '*impugned order*'.

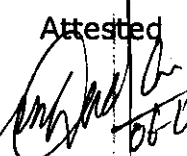
6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

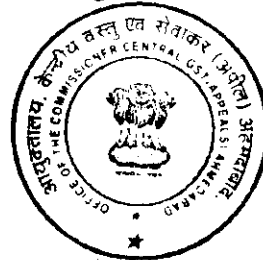
The appeal filed by the '*Department*' stand disposed off in above terms.

  
05/01/2022  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 05.01.2022

Attested  
  
05/01-2022  
(Dilip Jadav)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad



By R.P.A.D.

To,  
The Assistant / Deputy Commissioner,  
CGST & C. Ex., Division – II,  
Ahmedabad North.

Appellant

M/s. Perfect Solution & Hospitality Management,  
(Legal Name – Varshaben Pareshkumar Lakhani),  
Block-A+GF-1/A, Nr. City Gold Cinema,  
Pushp Deep Industrial Hub and Arcade,  
Nootan Mill Compound, Saraspur, Ahmedabad - 380018

Respondent

Copy to:

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