



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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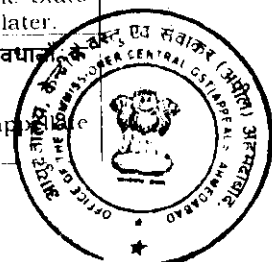


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DIN NO. : 20220264SW0000031313D

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/426/2021-APPEAL/6209-14
(ख)	अपील आदेश संख्या और दिन क / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-93/2021-22 and 16.02.2022
(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	16.02.2022
(ङ)	Arising out of Order-In-Original No. ZX2411200089145 dated 11.11.2020 issued by The Deputy Commissioner, CGST, Division-VII, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Uniquet Electro and Infra LLP (GSTIN - 24AAEFU8964B1Z3) Address:- 1st and 2nd, 1st Floor, Blue Star Complex, Old. High Court, Railway Crossing, Nr. Stadium Circle, Navrangpura, Ahmedabad -380014

(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 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 appropriate authority, the appellant may refer to the website www.cbic.gov.in .



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

M/s. Uniquet Electro & Infra LLP, 1 and 2, 1st Floor, Blue Star Complex, Old High Court Railway Crossing, Nr. Stadium Circle, Navrangpura, Ahmedabad - 380 014 (hereinafter referred as '*appellant*') has filed the present appeal against Order No. ZX2411200089145 dated 06.11.2020 passed in the Form-GST-RFD-06 (hereinafter referred as '*impugned order*') rejecting refund claim of Rs. 78,646/-, issued by the Deputy Commissioner, CGST & C. Ex., Division - VII S G Highway East, Ahmedabad North (hereinafter referred as '*adjudicating authority*').

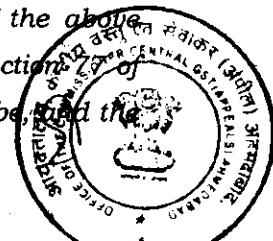
2(i). The '*appellant*' is holding GSTIN No.24AAEFU8964B1Z3 has filed the present appeal on 08.02.2021. As per the statement of facts mentioned in the appeal memo -

- the '*appellant*' is engaged in business of supply of Erection and Installation Services, Consultancy Services etc.
- that during the month of September they had affected the intra-state supply of Rs.4,36,922/- and on which the CGST of Rs.39,323/- & SGST of Rs.39,323/- should have been paid however by mistake they have paid IGST of Rs.78646/- instead of CGST & SGST.
- that said mistake of wrong deposit of tax had come to their knowledge at the time of filing of Annual GSTR-9 and accordingly at that time disclosed the correct liability and paid CGST Rs.39,323/- & SGST Rs.39,323/- vide DRC-03 ARN No. AD2401200230609 dated 30.01.2020.
- Filed the application for refund of such wrongly paid IGST of Rs.78,646/- vide ARN No. AA240920040832H dated 12.09.2020.
- SCN bearing No. ZW2410200339944 were issued to show cause as to why refund should not be rejected for reasons due to delay in filing of refund application. In response to said SCN a reply on 05.11.2020 was submitted and also attended the personal hearing on 04.11.2020.
- The Ld. Adjudicating authority has passed the impugned order vide which rejected the refund of Rs.78646/- considering it as time barred.
- Being aggrieved with said order filed the present appeal on 08.02.2021.

2(ii). The '*appellant*' has filed the present appeal on the grounds of appeal that -



- the SCN fails to provide reasoning and cite the relevant legislative provisions by virtue of which the subject refund claim is alleged as time barred.
- SCN proceeded with pre-determined mindset to reject the refund without offering any logical interference with law.
- In support of above contention Appellant has referred case of
 - o SBQ Steels Ltd. Vs. Commissioner of Cus. & C. Ex. & ST., Guntur 2014 (300) ELT 185 (AP).
 - o CCE Vs. Shemco India Transport 2011 (24) STR 409 (Tri. Del).
 - o Amrit Food Vs. CC 2005 (190) ELT 433 (SC)
- Since the SCN itself is vague, cryptic and untenable in law, and hence impugned OIO upholding the same SCN deserves to be quashed in toto.
- The adjudicating authority has not given any cogent findings. The impugned order is passed ignoring all the submissions of the appellant and it is in gross violation of principles of natural justice.
- In support of same referred case of
 - o Cyril Lasardo (Dead) Vs. Juliana Maria Lasarado 2004 (7) SCC 431
 - o Assistant Commissioner, Commercial Tax Department Vs. Shukla & Brothers reported at 2010 (254) ELT 6 (SC) = 2011 (22) STR 105 (SC)
- Refund is covered under Section 19 of IGST Act, 2017 and to which the time limit for filing refund as specified under Section 54 of the CGST Act, 2017 doesn't apply.
- Referred the provisions of Section 77 of the CGST Act and Section 19 of the IGST Act. After perusal of said provisions appellant submits that tax paid under wrong heads must be refunded.
- As per sub-section (2) of Section 77 of the CGST Act and sub-section (2) of Section 19 of the IGST Act clearly stipulates that no interest is required to be paid when the payment is made under the correct head thus no allegation of non-payment of tax is made as it is merely correction of an error.
- It is also pertinent to mention here that there is no time limit specified in Section 77 of the CGST within which the supply can "...subsequently held to be inter-State supply" as well as in Section 19 of the IGST Act within which the supply can "...subsequently held to be intra-State supply". It simply means that as and when it is held so, the refund of wrongly paid tax "shall" be granted. Therefore, in view of the above submissions it amply clear that no limitation are there in Section 77 of the CGST Act or Section 19 of the IGST Act, as the case may be, and the

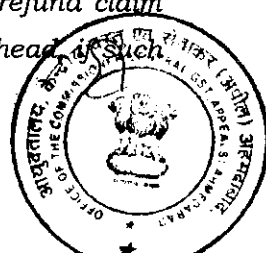


procedure for claiming refunds of tax wrongly collected and paid in wrong head(s) there under is prescribed under Rule 89 of the CGST Rules without invoking the provisions of Section 54 of the CGST Act, 2017.

- *In view of foregoing, the appellant respectfully prayed that –*
 - o *Set aside the impugned OIO*
 - o *Grant the refund of duties of Rs.78646/- under Section 19 of the IGST Act, 2017.*
 - o *Grant a personal hearing.*

2(iii). *The appellant has further submitted the additional submissions vide letter dated 01.01.2022 to defend their case. In the additional submission the appellant has submitted that –*

- *the dual mode of GST (i.e. CGST/SGST + IGST) coupled with the issues related to the identification of the correct place of supply can result in situations wherein the taxpayer ends up charging and paying the tax under an incorrect head (e.g. he may pay CGST/SGST where IGST was payable or vice-a-versa). Lawmakers were attuned to the said situation and hence created provisions contained u/s 77 of the CGST Act, 2017 or SGST Act, 2017 and Section 19 of the IGST Act, 2017. Said provisions in nutshell provides that the taxpayer can pay the tax under correct head when it is held that the nature of supply (i.e. intra-state or inter state) was initially determined incorrectly and claim a refund of tax paid originally under the incorrect head. The said benevolent provisions also provide for complete relief from interest on such belated payments under the correct head that were earlier paid under the incorrect head.*
- *the given provisions lead to an issue that what shall be the period of limitation in making the refund claim? In order to overcome such anomaly the Notification No. 35/2021-Central Tax dated 24.09.2021 as well as Circular No. 162/18/2021-GST dated 25.09.2021 have been issued to resolve the issue.*
- *the Government has issued Notification No. 35/2021 dated 24.09.2021 inserting sub-rule (1A) to Rule 89 of the CGST Rules, 2017 providing that the refund application is required to be made within a period of two years from the date of subsequent payment of tax under the correct head. Further, the said sub-rule also provides that for the payments under the correct head made before 24.09.2021 (i.e. for the period prior to insertion of the new sub-rule), the limitation period shall be two years from the date of effect of the new sub-rule. Hence for the refund claim based on the subsequent payment made under the correct head*



payment was done before 24.09.2021, the refund application for the tax paid under the incorrect head can be filed till 23.09.2023.

- *In view of above development in subject matter the refund claim filed on 12.09.2020 falls well within the ambit of amended Rule 89 of CGST Rules, 2017 vide Notification No. 35/2021 – Central Tax dated 24.09.2021 read with sub-rule (1A) of Rule 89 of the CGST Rules, 2017 and Circular No. 162/18/2021-GST dated 25.09.2021.*
- *Since now the very reason for which the refund was rejected stand clarified and appellants refund application falls well within the time limit to file the refund under Section 77 & 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.*
- *no other dispute with respect to the subject refund application except the time limit within which same was filed and now in view of above discussion such defect stands resolved / removed and their refund is very well admissible.*

Personal Hearing :

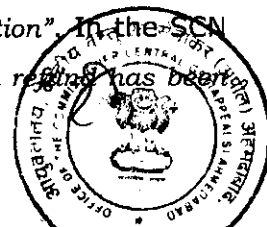
3. Personal Hearing in the matter was through virtual mode held on 06.01.2022. Shri Pratik Trivedi, CA appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has reiterated the written submission made till date and informed that nothing more to add into it.

Discussion and Findings :

4(i). 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 additional submission made by them.

I find that the 'Appellant' has filed the refund application of IGST of Rs.78,646/- on 12.09.2020. As informed by the 'Appellant' that during the month of September'2017 in connection with Intra-state supply of Rs.4,36,922/- they were require to pay CGST of Rs.39,323/- & SGST of Rs.39,323/-. However, by mistake they have paid IGST of Rs.78,646/- instead of CGST & SGST of above amount. Further, according to the 'Appellant' said mistake of wrong deposit of tax had come to their knowledge at the time of filing of Annual GSTR-9 and accordingly paid CGST Rs.39,323/- & SGST Rs.39,323/- vide DRC-03 ARN No. AD2401200230609 dated 30.01.2020.

4(ii). In response to said refund application I find that the department has issued a "Notice for rejection of application for refund" on 28.10.2020 informing reason as "Delay in Refund application". In the SCN a Remark is also mentioned that - "The amount for which refund has been



claimed was paid on 27.10.2017. As per definition of "relevant date" i.e. the date of payment of tax in this case, the claim appears to be barred by time. Also, kindly clarify if this amt was paid by cash or credit" . Further, I find that the adjudicating authority has rejected the said refund claim vide impugned order wherein mentioned the Remark that - "As per Sec. 20 of IGST Act, 2017 provisions of CGST Act will apply to IGST for matters of refund. And as per Sec 54 of CGST Act, 2017, relevant date in this case is date of payment of tax which is 27.10.2017. Hence, claim is barred by time."

4(ii). In the present appeal till the Notification 35/2021 - Central Tax issued, I find that the 'Appellant' has initially argued that their refund claim is covered under Section 19 of IGST Act, 2017 and therefore, the time limit for filing refund as specified under Section 54 of the CGST Act, 2017 doesn't apply. Further, I find that the 'Appellant' has referred the provisions of Section 77 of the CGST Act and Section 19 of the IGST Act and after perusing said provisions appellant submits that tax paid under wrong heads must be refunded. Further, the 'Appellant' has submitted that as per sub-section (2) of Section 77 of the CGST Act and sub-section (2) of Section 19 of the IGST Act clearly stipulates that no interest is required to be paid when the payment made under the correct head thus no allegation of non-payment of tax is made as it is merely correction of an error.

4(iv). However, after issuance of Notification No. 35/2021 and Circular No. 162/18/2021-GST dated 25.09.2021 the 'Appellant' has submitted additional submission and informed that in the light of said Notification and Circular issued by CBIC, the issue is now resolved. The relevant para of Notification No. 35/2021-Central Tax dated 24.09.2021 is reproduced as under :

(6) In rule 89 of the said rules, - (i) in sub-rule (1), with effect from the date as may be notified, after the words "may file", the words " , subject to the provisions of rule 10B," shall be inserted;

(ii) after sub-rule (1), the following sub-rule shall be inserted, namely:-

"(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner: Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be



filed before the expiry of a period of two years from the date on which this sub-rule comes into force.”;

Further, I find it pertinent to go through the CBIC's Circular No. 162/18/2021-GST dated 25.09.2021. The relevant para of the Circular is reproduced as under :

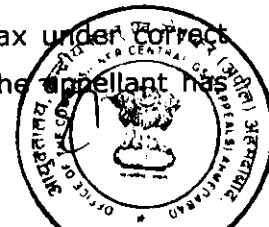
4. The relevant date for claiming refund under section 77 of the CGST Act/ Section 19 of the IGST Act, 2017

4.1 Section 77 of the CGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, is subsequently held as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of the CGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”) vide notification No. 35/2021-Central Tax dated 24.09.2021.

4.2 The aforementioned amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No.35/2021-Central Tax dated 24.09.2021, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021.

On going through the above, I find that in case of payment made under correct head before issuance of Notification No. 35/2021-Central Tax dated 24.09.2021 the refund application under Section 77 of the CGST Act / Section 19 of the IGST Act can be filed before expiry of two years from the date of issuance of said notification i.e. from 24.09.2021.

Further, I find that the CBIC vide above Circular has clarified that as per newly inserted sub-rule (1A) after sub-rule 1 of Rule 89 of the CGST Rules, refund under Section 77 of CGST Act/Section 19 of IGST Act can be claimed within two years from the payment of tax under correct head. In this regard, I find that in the present matter the appellant has



made payment under correct head on 31.01.2020 and filed refund application on 12.09.2020.

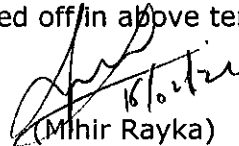
4(v). In view of above, I find that the in the present matter the '*Appellant*' has made the payment under correct head before issuance of Notification No. 35/2021 and therefore, eligible to file refund application within two years from 24.09.2021. Further, I find that tax paid under correct head on 31.01.2020 and filed refund application on 12.09.2020 so, I find that as per newly inserted sub-rule refund application is filed within two years from the date of payment of tax under correct head.

Therefore, in view of foregoing, in the present matter the refund application for refund of wrongly paid IGST of Rs.78,646/- filed on 12.09.2020, hence, it is found to be filed within the time limit in the light of above Circular and Notification. Further, I find that the *adjudicating authority* has rejected the refund claim on sole ground of time limit only. Therefore, it transpires that there is no other dispute with regard to refund claim.

5. In view of above discussions, I reject the ground of the *impugned order* based on which entire amount of refund claim is so rejected. Accordingly, I hereby set aside the *impugned order* and allow the appeal filed by the *appellant* without going into merit of all other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

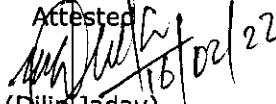
6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 16.02.2022

Attested

(Dilip Jadav)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. Uniquet Electro & Infra LLP,
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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-VII - S G Highway East, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File

