



आयुक्तकायालय
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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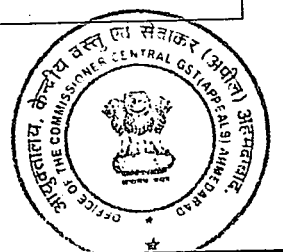


By Regd. Post

DIN NO. 20221164SW0000666D5D

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/580/2022 / 5361 - 66
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-107/2022-23 and 29.11.2022
(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	30.11.2022
(ङ)	Arising out of Order-In-Original No. ZZ2404210355638 dated 30.04.2021 passed by The Assistant Commissioner, CGST, Division - VII (S G Highway East), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Uplers Solutions Pvt. Ltd. (GSTIN-24AADCE8266E1ZP) 2ND Floor, Bhagyashree Banquet, Opp. Saibaba Mandir, Nr. Satadhar Cross Road, Ghatlodia, Ahmedabad, Gujarat-380061

(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 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. Uplers Solutions Pvt. Ltd. , 2nd Floor, Bhagyashree Banquet, Opp. Saibaba Mandir, Near Satadhar Cross Road, Ghatlodia, Ahmedabad-380061 (hereinafter referred as 'Appellant') has filed the present appeal against Order No. ZZ2404210355638, dated 30.04.2021 passed in the Form-GST-RFD-06 (hereinafter referred as *impugned order*) rejecting the refund claim of Rs.27,69,880/- out of total claim of Rs.33,66,041/-, issued by the Deputy Commissioner, CGST & C.Ex., Division-VII [S.G.Highway-East], Ahmedabad-North (hereinafter referred as *adjudicating authority*).

2(i). Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No.24AADCE8266E1ZP has filed the present appeal on 28.02.2022. The 'Appellant' had filed refund application for refund of Rs.33,66,041/- for the period October,2018 to March,2019, on dated 04.03.2021; on account of *"Refund of ITC on Export of Goods & Services without payment of Tax"*. In response to said refund claim a show cause notice dated 31.03.2021 was issued to the 'Appellant'. In the said SCN it was mentioned that refund application is liable to be rejected for the reason *"Delay in Refund application"* and amount Rs.33,66,041/- is admissible. A remark was also mentioned as - *"The claim till Feb, 2019 appears to be time-barred. Also, there is a mismatch in total turnover as per GSTR3B and GSTR-1."*

2(ii). Further, the 'Appellant' was asked to furnish reply to the SCN within 15 days from the date of service of SCN and a personal hearing was also offered to the 'Appellant' on 05.04.2021 at 5.35 PM.

The Appellant vide Form-GST-RFD-09 dated 15.04.2021 replied that due date of claiming refund of unutilized ITC claim before expiry of two year from the end of tax period as per CGST Act, 2017 ; that amended act is prospective effect w.e.f. 01.02.2019; they have filed original/ first application as on 08.12.2020 with ARN No.AA241120050030E and latter that deficient memo has been issued to them for three times and finally they again filed application for 4th time on 04.03.2021 with ARN No.AA24032101374N. Further, in case of mis-match in sales, they shown in statement -03 for refund and sales shown in GSTR-1 in respective period due to few credits note invoice against sales invoice; that in latter tax period, they amended original invoice of which value to zero but systems did not allow to amend credit note of which value to zero and they sought hearing to make it explain.



Thereafter, the *adjudicating authority* has rejected the refund claim of Rs.27,69,880/- for the period from October,2018 to February,2019 considering it as time barred and sanctioned refund of Rs.5,96,161/- for the month of March, 2019 vide the *impugned order*. A Remark is also mentioned in the *impugned order* as - "*The claim is time barred. The claimant claimed that Amendment Act, dated 29.08.2018 w.e.f. 01.02.2019, which amended the relevant date for export of service, is incorrect. The amendment brought changes for inverted duty structure only.*"

2(iii). Being aggrieved with the impugned order the appellant has filed the present appeal on 28.02.2022 [online on 28.06.2021] wherein they have stated that: -

➤ After submission of refund application on 08.12.2020 they received a deficiency memo with remarks that supporting documents not attached and asked to file a fresh application after rectification of the deficiency.

➤ They filed fresh refund claim for the same period and same refund again on 22.01.2021. However, they again received a deficiency memo with remarks that supporting documents such as GSTR-2A, Annexure-B not attached and asked to file a fresh application after rectification of the deficiency.

➤ They filed fresh refund claim for the same period and same refund again on 10.02.2021. They again received a deficiency memo dated 01.03.2021 on account of non-submission of portal copy of GSTR-2A and advised them to file a fresh application after rectification of the deficiency.

➤ Afterwards they filed fresh application on 04.03.2021 for the same period and same refund amount.

➤ They received a show cause notice dated 31.03.2021 for rejection of refund on the ground of "Delay in Refund application" and on 30.04.2021 they received refund rejection / sanction order rejecting the refund claim of Rs.27,69,880/- for the period from October,2018 to February,2019 considering the same as time-barred and granting a refund of Rs.5,96,161/- for the month of March, 2019. A remark is mentioned in the order that the claim is time barred. The claimant claimed that Amendment Act, dated 29.08.2018 w.e.f. 01.02.2019, which amended the relevant date for export of service, is incorrect. The amendment brought changes for inverted duty structure only.

➤ They re-produced the Section 54 of CGST Act, 2017 and also the definitions of *relevant date* prior to CGST (Amendment) Act, 2018 and thereafter

Afterwards

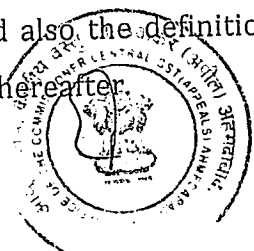
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Application as on

F.No. : GAPPL/ADC/GSTP/580/2022-APPEAL

20.11.2020 and latter that deficient memos have been issued to them for three times and finally they again filed application for 4th time on 04.03.2021. Reasons for mis-match in sales have also been explained. The *adjudicating authority* has rejected the refund claim of Rs.27,69,880/- for the period from Oct, 2018 to Feb, 2019 considering it as time barred and sanctioned refund of Rs.5,96,161/- for the month of March, 2019 vide impugned order.

4(iii). I find that in this case refund claim was rejected solely on time limitation ground. From the facts of the case I find that the refund claim for the period October'2018 to March, 2019, considered as filed on 04.03.2021, after issue of three deficiency memos dtd. 08.12.2020, 03.02.2021 & 01.03.2021, alleging the same as filed beyond two years from the relevant date prescribed under explanation (2) to Section 54 of the CGST Act, 2017 and hence beyond time limit prescribed under Section 54(1) of the CGST Act, 2017. I find that in the present matter the refund claim for the period October'2018 to March, 2019, was filed initially on 20.11.2020 which was followed by three deficiency memos dated 08.12.2020, 03.02.2021 & 01.03.2021. The department has considered the filing date as on 04.03.2021 on filing of the refund application forth times which should have been considered by the *adjudicating authority* as 08.12.2020 when the *appellant* has filed the refund application initially. I find that the *adjudicating authority* has issued the deficiencies in piece meal which should have been issued once conclusively. In the appeal memorandum the *Appellant* relied upon the various case laws in support of their claim claiming the same as being filed in time and also submitted a copy of Notification No. 13/2022-Central Tax dated 05.07.2022 issued by the CBIC.

4(iv). I have gone through the Notification No. 13/2022-Central Tax dated 05.07.2022 issued by the CBIC. The relevant Para is reproduced as under :-

CGST Act, 2017, 13

(iii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.

2. This notification shall be deemed to have come into force with effect from the 1st day of March, 2020.

In view of above, I find that in the present matter the refund claim for the period from October'2018 to March, 2019, was considered as filed on 04.03.2021 after filing of the application forth times which should be 20.11.2020 as discussed in the above para.

Notification

I have gone through the Notification No. 13/2022-Central Tax dated 05.07.2022 issued by the CBIC. The relevant Para is reproduced as under :-

(iii) excludes




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In light of Notification No. 13/2022-Central Tax dated 05.07.2022, I hold that the entire claim for the period October'2018 to March, 2019, considered even as filed on 04.03.2021, is not hit by time limitation prescribed under Section 54 of the CGST Act, 2017. Hence, the appeal filed by the appellant succeeds on time limitation ground. I find that the claim was rejected vide *impugned order* solely on the ground of limitation and there is no reference of other queries viz. mismatch in total turnover as per GSTR3B and GSTR-1, uploading of supporting documents such as GSTR-2A and other aspects raised in deficiency memos issued by the *adjudicating authority*. Therefore, any claim of refund filed in consequence to this Order may be examined by the appropriate authority for its admissibility on merit in accordance with Section 54 of the CGST Act, 2017 and Rules made thereunder.

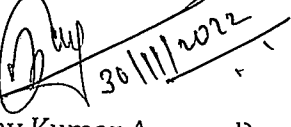
5. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, I allow the appeal of the "*Appellant*" without going into the merit of all other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017 and to be verified by the *adjudicating authority*.

6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the *appellant* stands disposed of in above terms.


(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 29.11.2022

Attested


(Ajay Kumar Agarwal)
Superintendent (Appeals)
Central Tax,
Ahmedabad.



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By R.P.A.D.

To,
M/s. Uplers Solutions Pvt. Ltd.,
2nd Floor, Bhagyashree Banquet,
Opp. Saibaba Mandir,
Near Satadhar Cross Road,
Ghatlodia, Ahmedabad-380061

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 Additional Commissioner, Central Tax (System), Ahmedabad- North.
5. The Deputy/Assistant Commissioner, CGST & C.Ex, Division-VII [S.G.Highway-East],
Ahmedabad-North.
- ✓ 6. Guard File.
7. P.A. File

