



आयुक्तकायालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in



By Regd. Post

DIN NO. 20221164SW000000C23B

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/1381/2022 / 5348-5
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-110/2022-23 and 30.11.2022
(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	01.12.2022
(ङ)	Arising out of Order-In-Original No. ZT2401220102014 dated 11.01.2022 passed by The AC/DC, CGST, Division - II (Naroda Road), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Padmaxi Textile (Legal Name - Nimeshbhai Indravadan Shah) (GSTIN-24AMWPS1827K1ZE) 1509, Kalyan Mills, Nawab Estate, Mahavirnagar, Ahmedabad, Gujarat-380025

(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 :

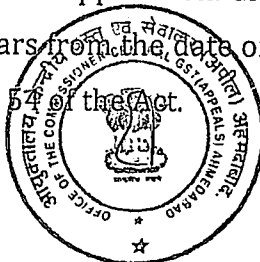
M/s Padmaxi Textile (Legal Name - Nimeshbhai Indravadan Shah) (GSTIN-24AMWPS1827K1ZE), 1509, Kalyan Mills, Nawab Estate, Mahavirnagar, Ahmedabad, Gujarat-380025 (hereinafter referred as *the 'Appellant'*) has filed the present appeal against the Order No. ZT2401220102014, dated 11.01.2022 (hereinafter referred as *the 'impugned order'*) passed by the Assistant Commissioner, CGST & C. Ex., Division-II, Naroda Road, Ahmedabad North (hereinafter referred as *the 'adjudicating authority'*) rejecting the refund claim of Rs.8,45,518/-.

2(i). Briefly stated the facts of the case are that the *'Appellant'* is holding the GSTINo.24AMWPS1827K1ZE and has filed the present appeal on 23.05.2022. The *'Appellant'* in the appeal memo informed that they had filed refund application for the refund claim of Rs.8,45,518/- on account of Inverted Tax Structure on dated 24.12.2021 for the period from 01.06.2018 to 31.10.2018. In response to the said refund claim a Show Cause Notice No. ZT2412210357825, dated 30.12.2021 was issued to the *'Appellant'*. In the said each SCN it was mentioned that refund application is liable to be rejected for the reason "*Delay in Refund application*".

2(ii). Further, the *'Appellant'* was asked to furnish reply to the SCN within stipulated period and personal hearing was also offered to the *'Appellant'* on 03.01.2022. The *adjudicating authority* has rejected the entire refund claim vide *impugned order*. A remark is mentioned in the *impugned order* as - "*The submission of the tax payer is not acceptable. There's no extension given in filing refund claim as clarified vide Circular No. 157/3/2021-GST, dated 20.07.2021. Therefore, entire refund claim is liable for rejection as time barred*".

2(iii). Being aggrieved with the impugned order the appellant has filed the present appeal on 23.05.2022, wherein they stated that -

- they have applied for refund in form RFD01 on 24.12.2021 but same was rejected on the reason of delay in filing refund application. Ground for the rejection is that they filed the refund after two years from the date of Invoice, considered beyond the time limit given under section 5 of the Act.



- The appellant in the appeal memorandum has requested to consider their refund application and grant refund as per Section 54 of the CGST Act, 2017.

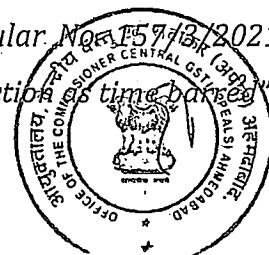
3. Personal Hearing in the matter was held on 15.11.2022 wherein Shri Sanket Kumar Patel, GST practitioner appeared in person on behalf of the 'Appellant' as authorized representative. During the P.H. he has reiterated the submissions made till date and informed that they want to give additional submission information, which was approved and 3 working days period was granted.

4. Accordingly, the appellant has submitted the additional written submission on 21.11.2022, wherein they stated that:-

- the time between 15th March, 2020 to till date is excluded for computation of 2 year limitation as per Hon'ble Supreme Court Order.
- the refund rejection order came on 11.01.2022 not considered the Hon'ble Supreme Court's Order and clause 4(b) of CBIC Circular No.157/13/2021-GST.
- Also submitted copies of (i) Notification No. 13/2022-Central tax, dated 05.07.2022 & also CBIC circular No. 157/13/2021-GST dated 20.07.2021.

The appellant prayed to quash the refund rejection order and grant the refund with interest as per Section 54 of the CGST Act, 2017.

5(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal Memorandum. I find that the 'Appellant' had preferred the refund applications on account of Inverted Tax Structure as per Section 54(3) of the CGST Act, 2017. In response to said refund application, a Show Cause Notice was issued to them proposing rejection of refund claim for reason mentioned as "Delay in Refund application". Thereafter, the refund claim was rejected by the adjudicating authority vide impugned order. I find that in the impugned order a remark is also mentioned as - "The submission of the tax payer is not acceptable. There's no extension given in filing refund claim as clarified vide Circular No. 157/12/2021-GST dated 20.07.2021. Therefore, entire refund claim is liable for rejection as time barred."



5 (ii). I observed that in the instant case the order was issued on 11.01.2022 and appeal was filed on 23.05.2022. At the outset, I find that the impugned order was communicated to the appellant on dated 11-01-2022 and present appeal was filed on dated 23-05-2022 i.e. after a period of four months hence the appeal was filed beyond the time limit prescribed under Section 107 of the Act. As per Section 107 (1) of CGST Act, 2017, the appellant was required to file appeal within 3 months from the date of communication of the said order. Further, as per Section 107(4) *ibid*, the appellate authority has powers to condone the delay of one month in filing of appeal, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown. Thus, the total time limit available to the appellant for filing of appeal is four months from the date of communication of order.

However, in the above context, I find that the Hon'ble Supreme Court has passed order on 10.01.2022 in matter of Miscellaneous Application No. 21 of 2022 in M.A. 665 of 2021, in SMW(C) No. 3 of 2020. Hon'ble Supreme Court vide Order dated 10.01.2022 ordered that for computing period of limitation for any suit, appeal, application or proceedings the period from 15.03.2020 till 28.02.2022 shall stand excluded and consequently balance period of limitation remaining as on 03.10.2021 if any, shall become available with effect from 01.03.2022 and that in cases where the limitation would have expired during the period from 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.

In the present matter, the "*impugned order*" was issued on dated 11.01.2022 and appeal was filed on 23.05.2022. Accordingly, in view of above order of Hon'ble Supreme Court the present appeal is considered to be filed in time. Hence, the appeal filed by the appellant succeeds on time limitation ground.

5(iii). Further, I find that the refund claim was rejected for the reason that there is delay in filing refund application. In the appeal memorandum *the Appellant* has 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.



F.No. : GAPPL/ADC/GSTP/1381/2022

5(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 :-

(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.*

I find that in the present matter the refund claim for the period from 01.06.2018 to 31.10.2018 was filed on 24.12.2021. Considering the limitation period it should have been filed within two years from the relevant date, However, In light of the Notification No. 13/2022-Central Tax, dated 05.07.2022, I hold that the entire claim for the period from 01.06.2018 to 31.10.2018 is not hit by time limitation prescribed under Section 54 of the CGST Act, 2017. I find that the claim was rejected vide *impugned order* solely on the ground of limitation. 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.

6. 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*.

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

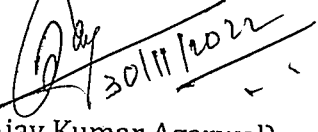
The appeals filed by the *appellant* stands disposed of in above terms.

(M. Hir Rayka)
Additional Commissioner (Appeals)

Date: 30.11.2022



Attested


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

By R.P.A.D.

M/s Padmaxi Textile,
(Legal Name -Nimeshbhai Indravadan Shah)
(GSTIN-24AMWPS1827K1ZE)
1509, Kalyan Mills, Nawab Estate,
Mahavirnagar, Ahmedabad,
Gujarat-380025

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-II (Naroda Road), Ahmedabad-North.
- ✓ 6. Guard File.
7. P.A. File

