



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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टेलीफैक्स 07926305136



DIN- 20221264SW000000DD7F

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/574/2022 -APPEAL /6224 - 29

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-114/2022-23**
दिनांक Date : **16-12-2022** जारी करने की तारीख Date of Issue : **16-12-2022**

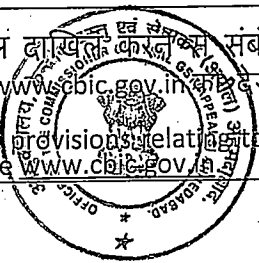
श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZP2412210316914 DT. 27.12.2021** issued by
Assistant Commissioner, CGST & CX, Division-II, Ahmedabad North

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**Alpaben Punit Ahir of M/s. Lalji International, Shed No. 27, Gopal Charan Ind Estate,
Nr. Alok Estate, B/h Safari House, Opp. Sejri Aavas Yojna, Odhav, Ahmedabad,
Gujarat-382415**

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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 के संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in 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



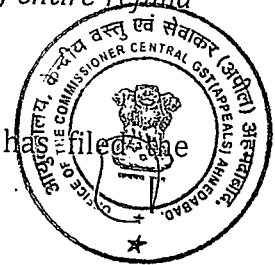
ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s Lalji International (Legal Name - Alpaben Punit Ahir) (GSTIN-24BTQPA6602L1ZM), Shed No. 27, Gopal Charan Ind Estate, Nr. Alok Estate, B/h Safari House, Opp. Sejri Aavas Yojna, Odhav, Ahmedabad, Gujarat-382415 (hereinafter referred as the 'Appellant') has filed the present appeal against the Order No. ZP2412210316914 dated 27.12.2021 passed in the Form-GST-RFD-06 (hereinafter referred as 'impugned order') rejecting refund claim of Rs. 1,08,741/-, issued by the Assistant Commissioner, CGST, Division-II (Naroda Road), Ahmedabad-North Commissionerate (hereinafter referred as "the adjudicating authority").

2(i). Briefly stated the facts of the case are that the 'Appellant' is holding GST No.24BTQPA6602L1ZM has filed the present appeal on 09.02.2022. The 'Appellant' in the appeal memo informed that they had filed refund application on account of exporting goods without payment of tax and were eligible to claim refund of accumulated input tax credit for which they filed refund application on 28.10.2021. In response to said refund claim a show cause notice dated 22.12.2021 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 a Remark was also mentioned as "The date of export of 3 SBs as per EGM submitted by the taxpayer is 29.08.19, 08.09.19 and 20.09.19. Two years from the relevant date is already expired. So, taxpayer is not eligible for refund."

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 24.12.2021. The appellant has replied to the said SCN in RFD-09 on 24.12.2021. Thereafter, 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 is no extension given for filling refund claim as per the clarification given in Cir no. 157/3/2021-gst dtd 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 09.02.2022 wherein they stated that -



- they are engaged in the business of surgical goods and made export of the goods during April,2019 to September,2019. They claimed the refund of unutilized input tax credit for the export sales by filing RFD-01 on 28.10.2021 but the same was rejected on the ground of delay in refund application.
- they are eligible for refund as per Hon'ble Supreme Court Order.

The appellant in the appeal memorandum has prayed to pass the order considering their refund application.

3. Personal Hearing in the matter was held on 16.11.2022 wherein Sh. Sanjay S. Patel, Advocate, appeared in person on behalf of the 'Appellant' as authorized representative. During the P.H. he reiterated the submissions made by them till date.

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 Appeals Memorandum. I find that the 'Appellant' had preferred the refund application for refund of ITC on Export of Goods & Services without payment of Tax as per Section 54 of the CGST Act, 2017. In response to said refund application Show Cause Notice was issued to them proposing rejection of refund claims for reasons mentioned as "Delay in Refund application". In the SCN, remark was also mentioned that - "The date of export of 3 SBs as per EGM submitted by the taxpayer is 29.08.19, 08.09.19 and 20.09.19. Two years from the relevant date is already expired. So, taxpayer is not eligible for refund". The appellant has replied to the said SCN on 24.12.2021. The said refund claim was rejected by the adjudicating authority vide the impugned order. I find that in the impugned order in the remark section it is mentioned that - "THE SUBMISSION OF THE TAX PAYER IS NOT ACCEPTABLE. THERE IS NO EXTENSION GIVEN FOR FILLING REFUND CLAIM AS PER THE CLARIFICATION GIVEN IN CIR NO. 157/3/2021-GST DTD 20.07.2021. THEREFORE, ENTIRE REFUND CLAIM IS LIABLE FOR REJECTION AS TIME BARRED".

4(ii). I observed that in the instant case the "impugned order" is of dated 27.12.2021 and appeal is filed on 09.02.2022. As per Section 107(1) of the CGST Act, 2017, the present appeal is considered to be filed in time.

4(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 prayed



upon the order passed by Hon'ble Supreme Court. In addition to this, CBIC has also issued a notification having no. 13/2022-Central tax dated 05.07.2022 regarding the time period for filing appeals.

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: -

"(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 01.04.2019 to 30.09.2019 was filed on 28.10.2021. 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 01.04.2019 to 30.09.2019 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.

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.

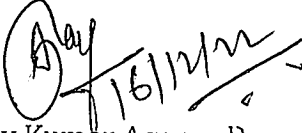

(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 16.12.2022



F.No.: GAPPL/ADC/GSTP/574/2022-APPEAL

Attested



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

By R.P.A.D.

To,
M/s Lalji International.
(Legal Name – Alpaben Punit Ahir),
(GSTIN-24BTQPA6602L1ZM)
Shed No. 27, Gopal Charan Ind Estate,
Nr. Alok Estate, B/h Safari House,
Opp. Sejri Aavas Yojna, Odhav,
Ahmedabad, Gujarat-382415.

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



