



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



07926305065-

टेलिफैक्स 07926305136



DIN- 20230164SW0000999D76

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1467 & 2161/2022 -APPEAL / 9329 -3h

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-131 to 132/2022-23**  
दिनांक Date : **12-01-2023** जारी करने की तारीख Date of Issue : **13-01-2023**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **F.No.Div-II/Refund/Pavan Enterprise/2021-22/221, DT. 29.09.2021 & F.No. Div-II/ Refund/Pavan Enterprise/21-22/158, DT. 31.05.2022** issued by Assistant Commissioner, CGST & CX, Division-II, Ahmedabad North

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Shri Bipin Meghajibhai Thumar of M/s. Pavan Enterprises, B/3, Patel Estate, B/h Muktidham Industrial Estate, Nikol Road, Nikol, Ahmedabad-382325**

|       |   |
|-------|---|
| (A)   | इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।<br>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 -<br>(i) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and<br>(ii) A sum equal to <b>twenty five per cent</b> 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।<br>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 :**

M/s. Pavan Enterprises, [ Legal Name of Business - Shri Bipin Meghajibhai Thumar, B/3, Patel Estate, B/h Muktidham Industrial Estate, Nikol Road, Nikol, Ahmedabad-382325, (hereinafter referred as '*Appellant*') has filed the present appeals against the letters, as tabulated below, (hereinafter referred as '*impugned orders*') denying the grant of interest on delayed refunds issued by the Assistant Commissioner, CGST & C.Ex., Division-II [Naroda Road], Ahmedabad-North Commissionerate (hereinafter referred as '*adjudicating authority*').

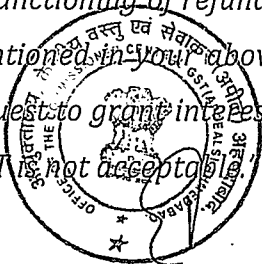
| S.No. | Appeal No. & date                           | Letters No. and Date  |
|-------|---|---|
| 1.    | GAPPL/ADC/GSTP/1467/2022, dated 26.05.2022. | Div-II/Refund/Pavan Enterprise/2021-22/221, dated 29.09.2021. |
| 2.    | GAPPL/ADC/GSTP/2161/2022, dated 04.07.2022. | Div-II/Refund/Pavan Enterprise/21-22/158, dated 31.05.2022.   |

2(i). Briefly stated the facts of the case are that the '*Appellant*' is holding GST Registration No.24AASPP1553B1ZU and has filed the present appeals on 26.05.2022 & 04.07.2022.

The appellant vide letters dated 27.08.2021 & 28.05.2022 had requested to the Assistant Commissioner, CGST & C.Ex., Division-II [Naroda Road], Ahmedabad-North [i.e. the *Adjudicating authority*] to grant interest on delayed refunds in respect of exports made on payment of IGST.

The *adjudicating authority* vide letters dated 29.09.2021 & 31.05.2022 has communicated the appellant his decisions as under:-

"On going through the above mentioned letter it appears that, you have not mentioned the cause / reason for the delay in granting the refund in respect of exports made on payment of IGST. Further, the refund of IGST paid in respect of exports is processed by the customs authorities of concerned port through which export have made. The delay in sanctioning of refunds of duty paid on the exports with respect to the shipping bills mentioned in your above mentioned letter is not processed by this office. Hence, your request to grant interest on delayed refunds in respect of exports made on payment of IGST is not acceptable."

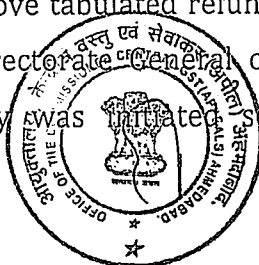


a) Export of goods on payment of IGST under claim of refund of tax were made as per details given hereunder :-

| Sr. No. | Shipping Bill No. & date | Amount of IGST refund | Date of refund application | Refund received date | Delay in no. of days |
|---------|--------------------------|-----------------------|----------------------------|----------------------|----------------------|
| 1.      | 3898312/ 18.07.2020      | 537085                | 20.08.2020                 | 31.07.2021           | 284                  |
| 2.      | 4201917/31.07.2020       | 152556                | 20.08.2020                 | 28.07.2021           | 281                  |
| 3.      | 4202385/31.07.2020       | 655310                | 20.08.2020                 | 28.07.2021           | 281                  |
| 4.      | 4407797/11.08.2020       | 507912                | 11.09.2020                 | 28.07.2021           | 259                  |
| 5.      | 4403885/11.08.2020       | 434880                | 11.09.2020                 | 28.07.2021           | 259                  |
| 6.      | 7444953/24.12.2020       | 496062                | 07.01.2021                 | 31.07.2021           | 146                  |
| 7.      | 7645223/02.01.2021       | 541664                | 18.02.2021                 | 31.07.2021           | 104                  |
| 8.      | 7641662/02.01.2021       | 320822                | 18.02.2021                 | 31.07.2021           | 104                  |
| 9.      | 9444812/18.03.2021       | 625934                | 19.04.2021                 | 31.07.2021           | 42                   |
| 10.     | 9435693/17.03.2021       | 448358                | 19.04.2021                 | 31.07.2021           | 42                   |
| 11.     | 9721734/27.03.2021       | 76467                 | 19.04.2021                 | 31.07.2021           | 42                   |
| 12.     | 9721734/27.03.2021       | 857397                | 19.04.2021                 | 31.07.2021           | 42                   |

| Sr. No. | Shipping Bill No. & date | Amount of IGST refund | Date of refund application | Refund received dated | Delay in no. of days |
|---------|--------------------------|-----------------------|----------------------------|-----------------------|----------------------|
| 1.      | 4816033/29.08.2020       | 428936                | 11.09.2020                 | 19.05.2022            | 554                  |
| 2.      | 4824813/29.08.2020       | 1047263               | 11.09.2020                 | 19.05.2022            | 554                  |
| 3.      | 5701356/07.10.2020       | 333127                | 09.11.2020                 | 19.05.2022            | 495                  |
| 4.      | 5701518/07.10.2020       | 213369                | 09.11.2020                 | 19.05.2022            | 495                  |
| 5.      | 5876992/15.10.2020       | 543788                | 09.11.2020                 | 19.05.2022            | 495                  |
| 6.      | 5886462/15.10.2020       | 291272                | 09.11.2020                 | 19.05.2022            | 495                  |

b) The appellant stated that above tabulated refunds were put on hold due to inquiry being conducted by the Directorate General of Analytics and Risk Management (DGARM). The said inquiry was initiated somewhere in October, 2020 and



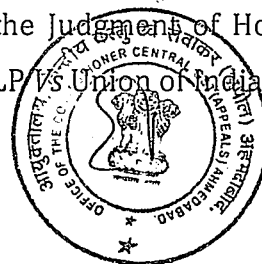
thereafter physical verification was carried out and required documents were submitted to the concerned range office. The report of investigation was forwarded somewhere in November, 2020 and thereafter queries were raised for the period July, 2017 to December, 2020. Reply alongwith CA certificate was forwarded through the office of the Jurisdictional Commissionerate on 25.05.2021. On further query raised for period July, 2017 to March, 2021 reply alongwith CA certificate forwarded on 26.06.2021. On completion of inquiry and no objection by DGARM refunds were granted as per above table.

- c) Since , refunds were granted with delay, interest under Section 56 of the CGST Act, 2017 was claimed before the Jurisdictional officer which was rejected on the ground that the subject refund was not processed by the jurisdictional officer i.e. CGST Division-II, Ahmedabad- North .
- d) The appellant submitted that the adjudicating authority failed to appreciate the fact that there is a delay in grant of refund of IGST on exports of goods on payment of tax. Refund should be granted within 60 days from the date of receipt of application. In terms of Section 56 of CGST Act, 2017, if any tax ordered to be refunded under Sub -section (5) of Section 54 is not refunded within sixty days from the date of receipt of application under Sub-section (1) of Section 54, interest @6% shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax.

In view of the above grounds, *the appellant* has prayed to direct the adjudicating authority to grant interest on delayed refund under Section 56 of the CGST Act, 2017 readwith Section 20 of the IGST, 2017.

**Personal Hearing:**

3. Personal Hearing in the matter was held on 23.11.2022, wherein Shri Tushar R. Shah, Chartered Accountant, appeared on behalf of the *appellant*, in person, as authorized representative. During the Personal Hearing he reiterated the grounds mentioned in the appeal memorandum and also submitted a further submission along with a set of documents dated 21.11.2022 for the appeals including the Judgments of Hon'ble Gujarat High court in the case of Parekh Plastichem Distributers LLP Vs Union of India.



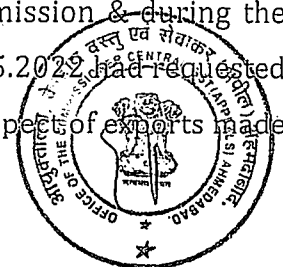
4. In the further submission dated 21.11.2022 the appellant submitted as under:-

- (a) This is refund of IGST on exports of goods on payment of tax under IGST Act, 2017 and not the refund of Customs duty under the Customs Act, 1962.
- (b) Since, refunds were granted with delay, interest under Section 56 of the CGST Act, 2017 was claimed before the Jurisdictional officer. The said claim was rejected on the ground that the same was not processed by the jurisdictional officer i.e. CGST Division-II, Ahmedabad- North.
- (c) It is "the proper officer" who shall pay interest in case of delay in granting refund under Section 54 of the CGST Act, 2017. The "proper officer" is the officer within whose jurisdiction the assessee obtains registration, pays taxes, filed returns and complies with all other formalities and compliances under the Act. The fact that refund is processed by customs authority is an administrative process and cannot be the ground for not allowing interest on delayed refunds.
- (d) They rely on the Judgment of Hon'ble Gujarat High court in the case of Parekh Plastichem Distributers LLP Vs Union of India, wherein the Court held that where there is delay in crediting the amount of refund on account of some technical glitch, the applicant is entitled to interest on the delayed payment towards refund @6% as provided under Section 56 of the CGST Act, 2017.
- (e) They also relied on the Judgment of Hon'ble Delhi High Court in the case of Ankush Auto Deals Vs Commissioner of DGST. The Hon'ble High Court has held that assessee is eligible for the grant of interest in case of delayed refund.
- (f) In case there is a case of erroneous refund, then it is the adjudicating authority who will recover the refund. Hence, in case of delayed refund also, it is the adjudicating authority who will grant the interest on delayed refund.

In view of the above submission, *the appellant* has prayed to grant the interest from the date immediately after expiry of sixty days from the receipt of application under Sub-section (5) of Section 54 of the Act till the date of refund granted.

**Discussion and Findings:**

5(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the appeal memorandum, additional submission & during the hearing. I find that the *appellant* vide letters dated 27.08.2021 & 28.05.2022 had requested the *adjudicating authority* to grant interest on delayed refunds in respect of exports made



on payment of IGST. The Adjudicating Authority has not accepted the claim of interest on delayed refunds on the grounds that the appellant has not mentioned the reason for the delay in granting the refund; that the refund of IGST paid in respect of exports is processed by the customs authorities of concerned port; that delay in sanctioning of refunds of duty paid on the exports with respect to the relevant shipping bills were not processed by the office of the Adjudicating authority. Hence, appellant's request to grant interest on delayed refunds in respect of exports made on payment of IGST was not accepted. Hence the present appeals.

**5(ii).** At the foremost, I find that in the 1<sup>st</sup> appeal tabulated above the impugned order was issued to the appellant on dated 27-09-2021 and present appeal was filed on dated 26-05-2022 i.e. after a period of eight months. As per Hon'ble Supreme Court's Order dated 10-1-2022 in suo motu writ petition (C) NO.3 of 2020 in MA No.665/2021, excluding the period from 15-3-2020 till 28-2-2022 in computing time limitation and providing 90 days extension from 01-3-2022 in filing appeals, I hold that the appeal at Sr. 1 is not hit by time limitation. Further, I observed that in the 2<sup>nd</sup> appeal tabulated above, the "impugned order" is of dated 31.05.2022 and appeal is filed on 04.07.2022. As per Section 107(1) of the CGST Act, 2017, the appeal is considered to be filed in time

**5(iii).** I find that the appellant contended that refunds were put on hold on account of inquiry being conducted by the Directorate General of Analytics and Risk Management (DGARM) which was claimed to had been completed in June, 2021 resulted into issue of No Objection by the DGARM and consequently refunds were granted to the appellant.

**5(iv).** I further find that IGST Refund module for exports was operational in ICES since 10.10.2017. As per Rule 96 of the CGST Rules 2017, dealing with refund of IGST paid on goods exported out of India, the shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India, once both the export general manifest (EGM) and valid return in Form GSTR-3 or Form GSTR- 3B, as the case may be, has been filed. The information on GSTR-1 shall then be transmitted electronically to Customs and the System designated by Customs shall process the refund claim. The IGST refund module has been designed in line with the Rule 96 of the CGST Rules 2017 and has an in-built mechanism to automatically grant refund after validating the Shipping Bill data with available in ICES against the GST Returns data transmitted by GSTN. The matching between the two data sources is done at Invoice level and any mismatch of the laid down parameters resulted into different errors/response codes. If the



necessary matching is successful, ICES shall process the claim for refund and the relevant amount of IGST paid with respect to each Shipping Bill shall be electronically credited to the exporter's bank account. This whole refund process is systems based and no Customs intervention is involved.

5(v). I find that the refund of the taxes under GST is governed under Section 54 of the CGST Act, 2017.

Explanation to Section 54 reads as under:-

- For the purposes of this section,-

*(1) "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).*

5(vi). I further find that as per Section 20 of the Integrated Goods And Services Tax Act, 2017 [i.e. IGST Act, 2017] provisions of Central Goods and Services Tax Act, 2017 [i.e. CGST Act, 2017] are *mutatis mutandis*, apply in relation to integrated tax.

5(vii). I further referred the Rule 96 of the CGST Rules, 2017, same is reproduced as under:-

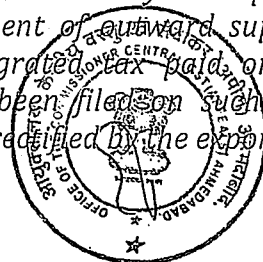
**Rule 96. Refund of integrated tax paid on goods <sup>1</sup>[or services] exported out of India.-**

*(1) The shipping bill filed by<sup>2</sup>[an exporter of goods] shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-*

*(a) the person in charge of the conveyance carrying the export goods duly files<sup>3</sup>[a departure manifest or] an export manifest or an export report covering the number and the date of shipping bills or bills of export; and*

*(b) <sup>4</sup> [the applicant has furnished a valid return in **FORM GSTR-3B**;*

*Provided that if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in **FORM GSTR-1**, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter;]*



On plain reading of Rule 96(1) of CGST Rules, 2017, it is apparent that the shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported subject to filing of valid GSTR-3B return and no mismatch is observed. *In case of mismatch such application for refund of Integrated Tax paid on the exported goods exported shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter.*

5(viii). I further referred the Section 56 of the CGST Act, 2017, same is reproduced as under:-

***"Section 56. Interest on delayed refunds.-***

*If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax: "*

5(ix). On concurrent reading of the above provisions it transpires that refund of the integrated tax paid on goods exported are governed under Section 54 & 56 of the CGST Act, 2017 readwith Section 20 of the IGST Act, 2017 and Rule 96 of the CGST Rules, 2017. The proper officer for the purpose of grant of refund and interest, if any, is the Deputy or Assistant Commissioner of Central Tax. Therefore, I find that in case of any delay in grant of refund of IGST, the jurisdictional Deputy or Assistant Commissioner of Central Tax is the proper officer to grant interest under Section 56 of the CGST Act, 2017. I, therefore, find that the Adjudicating authority to ascertain the reasons and period of delay in grant of refund in terms of the provisions of Section 54 & 56 of the CGST Act, 2017 readwith Section 20 of the IGST Act, 2017.

5(x). I further find that Hon'ble High Court of Gujarat in case of *M/s Parekh Plastichem Distributers LLP Vs Union of India [in SCA No. 11423 of 2020]* held that the even case of technical glitch in processing the refund claim, interest on the delayed payment towards refund is payable at the rate of 6% as provide under Section 56 of the CGST Act, 2017. Hon'ble High Court of Delhi in case of *Ankush Auto Deals Vs Commissioner of DGST*





[2022(65) GSTL 184(Del)], has also held that in case of expiry of 60 days from the date of receipt of refund application interest at the statutory rate as per Section 56 of the Act is payable.


6. I further find that the appellant has mainly stated that the Adjudicating Authority has erred both on facts and in law by not granting the interest on delayed refunds. On going through the records of the present matter and the impugned orders i.e letters issued by the Original Authority, I find that there is no evidence available on records that Personal Hearings in the matter were conducted. Therefore, I find that the adjudicating authority has violated the principles of natural justice in issuing the impugned orders. Further, I am of the view that speaking orders should have been passed by the original authority by giving proper opportunity of personal hearings to the *appellant*.

7. Considering the above facts, the *adjudicating authority* is hereby directed to process the claim of applications of interest on delayed refunds of the *appellant* by following the principle of natural justice. The '*Appellant*' is also directed to submit all the relevant documents/submission before the *adjudicating authority*.

8. In view of the above discussions, the *impugned orders/ letters* issued by the *adjudicating authority* are set aside for being not legal and proper and accordingly, the appeals filed by the *Appellant* are allowed.

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

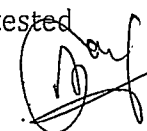
The appeals filed by the *appellant* stands disposed of in above terms.

  
(Mihir Rayka)

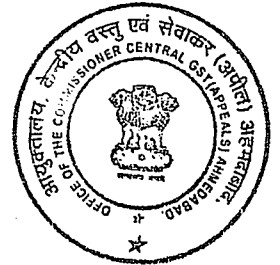
Additional Commissioner (Appeals)

Date: 12.01.2023

Attested

  
13/01/2023

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



**By R.P.A.D.**

To,  
M/s. Pavan Enterprises,  
[Legal Name - Shri Bipin Meghajibhai Thumar],  
B/3, Patel Estate, B/h Muktidham Industrial Estate,  
Nikol Road, Nikol, Ahmedabad-382325.

**Copy to :-**

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