



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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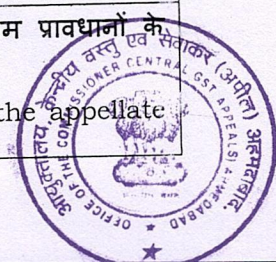


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DIN NO. : 20220564SW0000000E5F1

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/959-961/2021-APPEAL/101470/2019
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-016 to 018/2022-23 and 24.05.2022
(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	24.05.2022
(ङ)	Arising out of Order-In-Original No. (i) ZP2401210016691 dated 04.01.2021, (ii) ZN2401210021335 dated 04.01.2021, (iii) ZP2401210049713 dated 06.01.2021 issued by The Assistant Commissioner, CGST & CE, Division-VII (S G Highway East), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Royal Furnisher (GSTIN-24AAAFR6298P2ZH) Address: 411, Lilamani Corporate Heights, Opp. Ramapir Tekra, New Wadaj, Ahmedabad, Gujarat-380013

(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 :**

The following appeals have been filed by **M/s. Royal Furnishers**, 411, Lilamani Corporate Heights, Opp. Ramapir Tekra, New Wadaj, Ahmedabad - 380013 (hereinafter referred as '*Appellant*') against Refund Sanction/Rejection order in the form RFD-06 Orders (hereinafter referred as '*impugned orders*') passed by the Deputy Commissioner, CGST & C. Ex., Division - VII (S G Highway East), Ahmedabad North (hereinafter referred as '*Adjudicating Authority*').

Sr. No.	Appeal No. & Date	RFD-06 Order No. & Date	Amount of Refund Rejected
1	GAPPL/ADC/GSTP/959/2021- APPEAL Dated 27.05.2021	ZN2401210021335 Dated 04.01.2021	Rs.4,09,518/- (IGST)
2	GAPPL/ADC/GSTP/960/2021- APPEAL Dated 27.05.2021	ZP2401210016691 Dated 04.01.2021	Rs.7,91,637/- (IGST) Rs.64,650/- (CGST) Rs.64,650/- (SGST) Total - Rs.9,20,937/-
3	GAPPL/ADC/GSTP/961/2021- APPEAL Dated 27.05.2021	ZP2401210049713 Dated 06.01.2021	Rs.1,04,343/- (IGST) Rs.81,073/- (CGST) Rs.81,073/- (SGST) Total - Rs.2,66,489/-

2(i). The brief facts of the case are that the '*Appellant*' is holding GST Registration - GSTIN 24AAAFR6298P2ZH. The '*Appellant*' had filed refund claim applications of accumulated ITC on account of Supplies made to SEZ Unit/SEZ Developer (without payment of Tax). The details of refund applications are as under :

Refund Application under form RFD-01A		
ARN No.	Period	Refund claimed
AB2406186155905 / 25.02.19	June' 2018	Rs.4,09,518/- (IGST)
AB2407180262449 / 26.02.19	July' 2018	Rs.7,91,637/- (IGST) Rs.64,650/- (CGST) Rs.64,650/- (SGST) Total - Rs.9,20,937/-
AA240818047915R / 26.02.19	August' 2018	Rs.1,04,343/- (IGST) Rs.81,073/- (CGST) Rs.81,073/- (SGST) Total - Rs.2,66,489/-



Since, department has not issued any order in respect of above refund applications the 'Appellant' has again filed refund application for the same period. The details are as under :

Refund Application under form RFD-01/01A		
ARN No.	Period	Refund claimed
AA2411200615202 / 24.11.20	June' 2018	Rs.4,09,518/- (IGST)
AA241120061629I / 24.11.20	July' 2018	Rs.7,91,637/- (IGST) Rs.64,650/- (CGST) Rs.64,650/- (SGST) Total - Rs.9,20,937/-
AA241120061661U / 24.11.20	August' 2018	Rs.1,04,343/- (IGST) Rs.81,073/- (CGST) Rs.81,073/- (SGST) Total - Rs.2,66,489/-

The 'Appellant' has submitted in the appeal memo that all the above refund applications has been rejected by the *adjudicating authority* for the reason of time barred refund vide *impugned orders*.

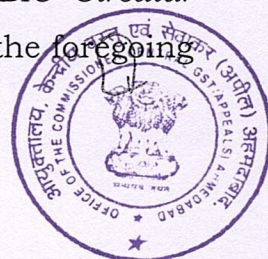
2(ii). Being aggrieved with the *impugned orders* the 'Appellant' has filed the present appeals on 27.05.2021 on the grounds that -

- Present refund claim applications filed under category "Any Other" in respect of ITC accumulated on account of supplies made to SEZ Unit / SEZ Developer (Without payment of tax).
- In the initial period of implementation of GST, due to non-familiarity with the common portal / system, the message box asking "whether we want to apply for 'Nil refund for June'18, July'18 & August'18" were inadvertently selected by us on.
- Subsequently, on realizing the inadvertent selection of option, we tried to rectify it and file the refund claim, but in vain.
- Thereafter, we tried to file refund claim under the category 'unutilized Input tax credit accumulated on account of supplies made to SEZ Unit / SEZ Developer (without payment of tax)." For the month of September'18 to January'19 on the common portal, which was successfully filed by us, processed by the department and refund has been sanctioned to us. However, the common portal / system did not allow to file Refund claim for June'18, July'18 & August'18 under the category 'unutilized Input Tax Credit accumulated on account of supplies made to SEZ Unit / SEZ Developer (without payment of tax)."



- The CBIC vide Circular No. 110/29/2019-GST dated 03.10.2019 has recognized the problems being faced by tax payers and clarified that –
 - o A registered person who has filed a NIL refund claim in **FORM GST RFD-01A/RFD-01** for a given period under a particular category, may again apply for refund for the said period under the same category only if he satisfies the following two conditions:
 - o **a.** The registered person must have filed a NIL refund claim in **FORM GST RFD-01A/RFD-01** for a certain period under a particular category; and
 - o **b.** No refund claims in **FORM GST RFD-01A/RFD-01** must have been filed by the registered person under the same category for any subsequent period.
 - o It may be noted that condition (b) shall apply only for refund claims falling under the following categories:
 - i.** Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
 - ii.** Refund of unutilized ITC on account of supplies made to SEZ Unit/ SEZ Developer without payment of tax;
 - iii.** Refund of unutilized ITC on account of accumulation due to inverted tax structure;
- In view of above Circular Appellant had filed refund applications for the month of June'18, July'18 & August'18 in compliance to aforesaid para ii, under category "any other" instead of correct category – "unutilized Input Tax Credit (ITC) accumulated on account of supplies made to SEZ Unit / SEZ Developer (without payment of tax)." Earlier, inadvertently opted to file NIL refund for the aforesaid months in the said category.
- There were only purchased in the month of June'18, July'18 & August'18 and the outward turnover were zero, hence, the refund amount could be zero. That's why refund claims filed Nil by the appellant.
- Appellant was under impression that ITC will be carried forward to the next refund application when outward turnover available in the next or coming all months but GST Portal or refund application only accepted ITC of only selected period refund application.

3. The 'Appellant' in the grounds of appeal has further referred Para 5 of CBIC Circular No. 94/13/2019-GST dated 28.03.2019 and submitted that the refund sanctioning authority has not at all disputed the applicability of the said clarification to the refund claim of 'Appellant'. However, the reason given by the refund sanctioning authority for not following the aforesaid clarification issued by the CBIC is that the 'deficiency memo had not been issued, therefore para 5 of CBIC Circular 94/13/2019-GST dated 28.03.2019 is not binding'. Considering the foregoing



facts and submissions, the appellant has made prayer to grant personal hearing in the matter and set aside the impugned order with consequential reliefs.

4. Personal Hearing in the matter was through virtual mode held on 05.05.2022 wherein Sh. Mehul Doshi, CA appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has reiterated the submissions made by them till date to defend the case and informed that they have nothing more to add to it.

Discussion and Findings :

5(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in all the three Appeals Memorandum as well as additional submissions in respect of all three appeals.

I observed that in the instant case all the three appeals have been filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. In this regard, I find that 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. The relevant para No. 5 (I) of said order is reproduced as under :

5. *Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions :*
 - I. *The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasijudicial proceeding.*

In the present matter, the "impugned orders" are of 04.01.2021 & 06.01.2021 so, the normal appeal period of three months was available up to 03.04.2021 & 05.04.2021 whereas, the present



appeals are filed on 27.05.2021. However, in view of above Para 5(I) of the order of Hon'ble Supreme Court the present appeals are considered to be filed in time.

5(ii). I find that the 'Appellant' had preferred the refund applications of accumulated ITC on account of Supplies made to SEZ Unit/SEZ Developer (without payment of Tax) for the period from June'18 to August'18 on 24.11.2020 which have been rejected by the adjudicating authority vide impugned orders.

In the present appeal the appellant has submitted that they have initially applied for NIL refund on 14.11.2018 for the period from June'18 to August'18 under category "*On account of supplies made to SEZ unit / SEZ developer (without payment of tax)*". Because they were under impression that in new era of GST, refund can be claimed only in the month of sales, which was in September'2018. However, in September'18 no previous month's credit allowed to claim as refund, hence filed NIL Returns.

5(iii). Further, I find that the 'Appellant' has referred the CBIC's Circular No. 110/29/2019 - GST dated 03.10.2019 and submitted that in compliance to above Circular they have filed refund application, which has been rejected. I find that as per aforesaid Circular dated 03.10.2019 a registered person who has filed NIL refund claim for a given period under particular category, may again apply for refund for said period under same category only if satisfies the following two conditions :

- a. The registered person must have filed a NIL refund claim in **FORM GST RFD-01A/RFD-01** for a certain period under a particular category; and
- b. No refund claims in **FORM GST RFD-01A/RFD-01** must have been filed by the registered person under the same category for any subsequent period.

The 'Appellant' has submitted that they had filed NIL refund claims and in compliance to above Circular again filed refund claims which has been rejected by the department for which present appeals are filed.

5(iv). Further, on going through the copies of present *detailed status of Refund ARN*, I find that for the month of June'18 to August'18 the appellant has initially filed refund application for **Nil refund on 14.11.2018**. Thereafter, the 'Appellant' has filed separate refund applications for June'18 to August'18 as under :



Month	Date of Application	ARN No.	Status	Refund Amount
June'18	25.02.2019	AB2406186155905	The Refund application has been transmitted to the Tax Officer. Please wait until further communication/ update	Rs.409518/-
July'18	26.02.2019	AB2407180262449		Rs.920955/-
August'18	26.02.2019	AA240818047915R		Rs.266489/-

As per the present status, the above refund applications are still pending for decision.

5(v). Since, the refund claims in the present matter are rejected on the ground of time barred, I find it germane to refer the provisions of the Section 54 of the CGST Act, 2017. The same is reproduced as under :

***Section 54. Refund of tax.-**

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

In view of above, any person claiming refund of any tax paid may make application before expiry of two years from the relevant date. Here in the present matter the refund application were filed on 24.11.2020 and the refund was relating to the period of June'18, July'18 and August'18. Therefore, I find that present refund applications were made beyond the prescribed time limit. The 'Appellant' in the present appeal contending that in compliance to CBIC's Circular No. 110/29/2019 – GST dated 03.10.2019 they have filed refund applications on 24.11.2020. The 'Appellant' is claiming that initially they have filed Nil Refund Application on 14.11.2018 and after issuance of above Circular they have filed the refund application on 24.11.2020. In this regard, I find that the Circular was issued 03.10.2019 so there was sufficient time to again file the refund claims by 'Appellant' within time limit as per Section 54 of the CGST Act, 2017. However, I find that in the present matter the appellant has filed the refund applications on 24.11.2020 i.e. after a period of more than One year from the issuance of



Circular dated 03.10.19. Therefore, I do not find any force in appellant's submissions.

5(vi). Further, I find that the 'Appellant' has produced the copy of present *detailed status of Refund ARN* in respect of refund applications filed by them for same period in February'2019. On going through the same I find that the said refund applications are still lying pending with department. Therefore, in absence of any speaking order this appellate authority is unable to comment on the same. However, I am of the view that instead of keeping pending the said refund applications, the department should have decided it without further delay.

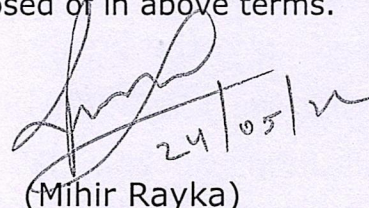
5(vii). In view of above discussions, I find that the refund claims for the month of June'18, July'18 and August'18 filed on 24.11.2020 are found to be filed beyond the prescribed time limit of 2 years as per Section 54 of the CGST Act, 2017. Therefore, I find that the *adjudicating authority* has correctly rejected the refund claim on ground of time barred.

6. Accordingly, I do not find any reason to interfere with the decision taken by the *adjudicating authority* vide "*impugned orders*". However, looking to the facts and submissions mentioned in foregoing paras I find that the pending refund applications filed by 'Appellant' in February'2019 may be taken up for disposal by the department at the earliest without further delay.

In view of above discussion, I reject all the three appeals filed by the 'appellant'.

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.


24/05/22

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 24.05.2022

Attested

(Dilip Jadav)

Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,

M/s. Royal Furnishers,
411, Lilamani Corporate Heights,
Opp. Ramapir Tekra, New Wadaj,
Ahmedabad - 380013

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



