



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By Speed Post

DIN NO. : 20230364SW000000A4A6

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2472/2022-APPEAL / 9133-39
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-165/2022-23 & 02.03.2023
(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	03.03.2023
(ङ)	Arising out of Order No. ZP2406220138386 dated 08.06.2022 issued by Deputy/Assistant Commissioner, Division-VII, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Adani Total Gas Limited, Heritage Building, 8 th Floor, Nr. Gujarat Vidyapeeth, Ashram Road, Usmanpura, Ahmedabad, Gujarat-380014

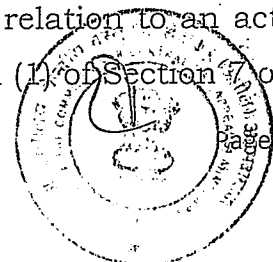
(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.	
(i)	National Bench or Regional Bench of Appellate Tribunal framed 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.	
	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying –	
(i)	(i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and	
(ii)	(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-APPEALBRIEF FACTS OF THE CASE:

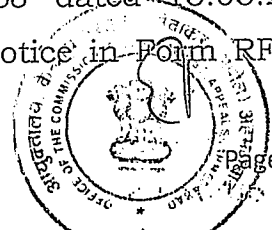
M/s. Adani Total Gas Limited, Heritage Building, 8th Floor, Nr. Gujarat Vidyapeeth, Ashram Road, Usmanpura, Ahmedabad – 380 14 (hereinafter referred to as “*the appellant*”) has filed the following appeals against Refund Rejection Order (hereinafter referred to as “*the impugned order*”) passed by the deputy / Assistant Commissioner, CGST, Division – VII, S G Highway, Ahmedabad North Commissionerate (hereinafter referred to as “*the adjudicating authority*”) rejecting refund claim filed by the appellant.

Sr. No.	Appeal File Number	Date of filing of appeal	Refund rejection Order (Impugned Order) No. & Date	Amount of Refund (in Rs.)
1	GAPPL/ADC/GSTP/2472 /2022	01.09.2022	ZP2406220138386 dated 08.06.2022	18,23,456/-

2. Brief facts of the case in the present appeals is that the appellant is registered under GSTIN 24AAFCA3788D1ZS and engaged into the business of supplying Natural Gas, CNG and PNG to domestic and industrial customers. The appellant has been laying gas pipeline networks across the country for transportation / supply of gas. Pipelines are laid down by the appellant under the earth after taking approvals from the concerned regulatory authorities such as Municipal Council / Development Authority / Gram Panchayat etc. Generally, the pipelines are laid down under or near the road and which happens to be the part of public property regulated, created, maintained, administered and controlled by the respective public authority. Laying of such pipelines may cause damage to the road and due to which the concerned authority grants the permission for road cutting and Right of Way (“ROW”) subject to payment of pre-determined compensatory amount called as “Road Cutting Charges”. The appellant had made aggregate payment of Rs. 1,01,30,310/- towards Road Cutting Charges to Porbandar Nagarpalika (hereinafter called as “Council”) and such payment is liable to GST under Reverse Charge Mechanism (RCM) as notified under Notification No. 13/2017-Central Tax (Rate) dated 28th June 2017. The appellant had paid amounting to Rs. 18,23,456/- (CGST@9% Rs. 9,11,728/- + SGST@9% Rs.9,11,728/-) on the payments of Rs. 1,01,30,310/-. Later on, the appellant realized that all the payments made to the “Council” do not attract the GST i.e mere payment without constituting a supply as defined and contemplated in sub-section (1) of Section 7 (Schedule II of the ACT amended retrospectively) shall not attract any tax liability. It was also learnt by the appellant that certain payments made to the “Council” and other Government departments, though in relation to an activity constituting a “supply” within the meaning under sub-section (1) of Section 7 of the



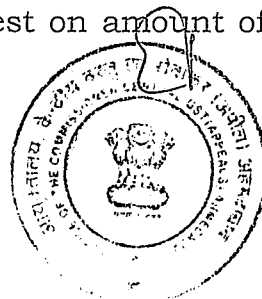
Act, will not fall within the scope of taxation. Activities carried out by the Government and Local Authorities with respect to functions entrusted under Article 243W and /or Article 243G of the Constitution of India ("Constitution") are neither treated as supply of goods nor supply of services by virtue of Notification No. 14/2017-Central Tax (Rate) dated 28th June, 2017 as amended from time to time, under which it has been notified that the following activities or transactions undertaken by the Central Government or State Government or Union Territory or any local authority in which they are engaged as public authority, shall be treated as neither as a supply of goods nor a supply of service, namely:- *"Services by way of any activity in relation to a function entrusted to a Panchayat under the Article 243G of the Constitution"*. Supply is defined in sub-section (1) of Section 7 of CGST Act, 2017 whereas sub-section (2) treats certain activities / transactions neither as supply of goods nor supply of services in order to exclude them from the levy of tax under Section 9. Notification No. 14/2017-CT (rate), dated 28th June 2017 was issued to exclude all the activities / transactions undertaken by the Central Government, State Government, Union Territory and Local Authority from the scope of "supply" and consequently from the scope of taxation under Section 9 of the Act. Thus the "Road Cutting Charges" paid to the Council did not involve element of "supply" defined under sub-section(1) of Section 7 of the Act and accordingly tax was not required to be paid, and assuming that the payment in lieu of an activity carried out by Council did not attract provisions of Section 9 of the Act. The Local Authority ("Council") as defined in Section 2(69) of the Act and the Road Cutting Charges were in the nature of the functions entrusted to the Council under Article 243W of the Constitution of India and functions entrusted to the local authorities under Article 243W are listed in Twelfth (12th) Schedule. From the above, the payments made by the appellant for Road Cutting Charges were part of list and accordingly covered by the scope of the Notification No. 14/2017-CT (rate), dated 28th June 2017. Accordingly, the appellant filed a claim of refund of Rs. 18,23,456/- under Section 54 of the CGST Act, 2017 and refund application was made in the Form RFD-01 vide ARN No. AA240422060448E dated 16.04.2022. Further, a deficiency memo DM in Form RFD-03 was issued on 20.04.2022. The DM-1 was replied by the appellant and fresh refund application was made in Form RFD-01 vide ARV No. AA240422131274R on 29.04.2022 by the appellant. Again, the appellant served with a deficiency memo in Form RFD-01 on dated 10.05.2022 under-which no clear reasons mentioned and asked the appellant to file the revised refund application post rectifying the deficiencies. Later on, the appellant, for the third time, filed a fresh refund claim of Rs. 18,23,456/- under Section 54 of the Act in the Form RFD-01 bearing ARN No. AA240522049183J dated 13.05.2022. Thereafter, the appellant was served with a Show Cause Notice in Form RFD-08



bearing No. ZX2405220329963 dated 24.05.2022, as the copy of which could be not available as the same is not downloadable from the GST portal. In response to the said SCN, the appellant replied categorically in FORM RFD-09 dated 08.06.2022. Thereafter, the Adjudicating Authority passed the impugned order in Form RFD-06 bearing No. ZP2406220138386 dated 08.06.2022 and rejected the entire refund claim of Rs. 18,23,456/- on time limitation as *"The first application was filed on 16.04.2022 and DM was issued on 18.4.2022 but fresh application was filed on 29.04.2022. Hence, the application which was filed on 29.04.2022 is considered as time barred. IF it would have been filed on 22.04.2022, then it might be taken up for scrutiny."* Copy of the impugned order could not be enclosed as the same is not downloadable from the GST portal.

3. Being aggrieved with the impugned order, the appellant preferred appeal on the following grounds:

- The Adjudicating authority grievously erred in law as well as in facts while rejecting the refund claim of Rs. 18,23,456/- on the ground of limitation;
- The adjudicating authority failed to appreciate that the limitation of two (2) years as contemplated in Section 54(1) is not applicable to the payment made under a mistake of law, that the payment made by the appellant was not subjected to levy and thus cannot be retained by the exchequer in terms of Article 265 of the Constitution of India;
- That the first refund application was well within a limit of two years from the date of payment;
- That the limitation of two years should have been counted by taking into the effect the extension provided due to COVID-19. Decision of the adjudicating authority is *per incuriam* the Notification No. 13/2022-CT dated 05.07.2022.
- That the impugned order passed without respecting the principles of natural justice and is in violation of the *doctrine of audi alteram partem*.
- To set aside the impugned order and grant interest on amount of refund in dispute



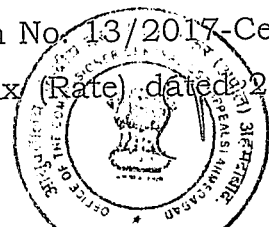
Personal Hearing:

4. Personal hearing in the present appeals held on 10.01.2023 personally, Mr. Rahul Patel, Authorised Representative appeared on behalf of the appellant in the matter. He submitted that they have nothing more to add to their written submission till date.

Discussion and Findings :

5. 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 adjudicating authority has not disputed about the refund admissibility of the appellant. Further, I find that the 'Appellant' had preferred the refund application(s) on account of payment made under RCM to the local authority (i.e "Porbandar Nagar Palika") against the Road Cutting Charges which are not leviable under section 9 of the CGST Act, 2017 as per Notification No. 13/2017-CT (Rate), dated 28th June 2017 and subsequently vide Notification No. 14/2017-CT (Rate), both dated 28th June 2017, certain functions / activities / transactions be treated neither as a supply of goods nor a supply of services. The appellant has paid Rs. 18,23,456/- (Rs. 9,11,728/- CGST + Rs. 9,11,728/- SGST) in their GSTR-3B return for the month of March-2020 which was subsequently filed on 16.04.2020. In response to aforesaid refund application(s) filed by the appellant on 16.04.2022, deficiency memos DM-1 and DM-2 were issued to the appellant on 18.04.2022 and 10.05.2022 and accordingly the appellant has filed fresh refund application on 13.05.2022 vide ARN NO. AA240522049183J for amount of Rs. 18,23,456/- under Section 54 of the CGST Act, 2017.

5.1 Thereafter, they were issued show cause notice in the Form of RFD-08 bearing No. ZX2405220329963 dated 24.05.2022 proposing rejection of refund on the ground that " *The claim is time-barred as per Section 54 of CGST Act and payment particulars of the payment to AMC not submitted. The claimant needs to show why the refund should not be rejected on this ground.*" The appellant vide ARN NO. ZX24053220329963 dated 08.06.2022 submitted / uploaded their reply in the Form GST-RFD-09 and attached supporting documents as SCN reply, Annexure-A, Annexure-B, Statement of Refund, Demand Note, Payment Challan, Payment Summary, CA Certificate etc. Further, I find that the appellant had also pointed out that they had initially filed refund application on 16.04.2022 and 29.04.2022 respectively and therefore, as per Notification No. 13/2017-Central Tax (Rate), dated 28th June 2017 and 14/2017-Central Tax (Rate), dated 28th June



2017 and Section 54 of the CGST Act, 2017 they are eligible for refund. However, I find that the adjudicating authority vide impugned order has rejected the refund claim of Rs. 18,23,456/- without considering the reply of the appellant on the grounds that *the refund is being rejected on the grounds mentioned in the document uploaded along-with the order.*

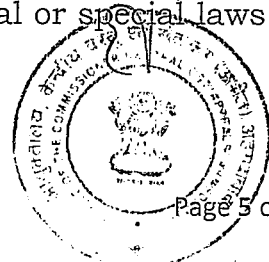
"As per SCN reply, it is observed that :

- 1. The first application was filed on 16.04.2022 and DM was issued on 18.04.2022 but fresh application was filed only on 29.04.2022. Hence, the application which was filed on 29.04.2022 is considered as time barred. If it would have been filed on 22.04.2022, then it might be taken up for scrutiny.*
- 2. SCN could not be visible due to some technical glitch. TP should have raised ticker for the same.*
- 3. Proof of payment made to Porbandar Nagarpalika are attached for the verification of the claim.*

Claim rejected."

5.2 I find that in this case refund claim(s) were rejected solely on time limitation ground. From the facts of the case I find that the refund claim for the period March 2020 duty paid under GSTR-3B and GSTR-3B return filed on 16.04.2020 and after receiving deficiency memos on 18.04.2022 and 29.04.2022, the appellant filed fresh refund application on 13.05.2022 vide ARN NO. AA240522049183J period is 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.

5.3 In the above context, I find that the Hon'ble Supreme Court in Misc. Application No. 665/2021 in SMW(C) No. 3/2020 vide Order dated 23.09.2021 ordered that for computing the period of limitation for any suit, appeal, application or proceedings the period from 15.03.2020 till 02.10.2021 shall stand excluded and consequently balance period of limitation remaining as on 15.03.2020 if any, shall become available with effect from 03.10.2021 and that in cases where the limitation would have expired during period from 15.03.2020 till 02.10.2021 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. Subsequently, the Hon'ble Supreme Court vide order dated 10.01.2022 ordered that in continuation of order dated 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 quasi-judicial proceedings.



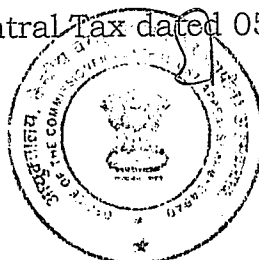
5.3 Further, I find that on the subject matter a Notification No. 13/2022-Central Tax dated 05.07.2022 has been issued by the CBIC. The relevant para is reproduced as under:

“(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.”

5.4 In view of foregoing facts, I find that in respect of refund claims for which due date for filing refund claim falls during period from 01.03.2020 to 28.02.2022, two years time limit under Section 54 of the CGST Act, 2017 is to be reckoned, excluding said period. In the subject case, the claim was filed for the payment made vide GSTR-3B on 16.04.2020 for the month of March-2020 considering the due date prescribed under Section 54 the claim period for which the due date falls during 01.03.2020 to 28.02.2022 is therefore not hit by the time limitation under Section 54 of the CGST Act, 2017.

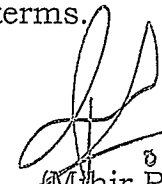
5.5 I find that in the present matter the claim was filed for GSTR-3B filed on 16.04.2020 for the month March-2020, accordingly, following the order of the Hon'ble Supreme Court in MA 665/2021 in SMW(C) No. 3/2020 as well as in the light of Notification No. 13/2022-Central Tax dated 05.07.2022, I hold that the rejection of refund claim of Rs. 18,23,456/- on the ground of time limitation is not legal and proper. Hence, the appeal filed by the appellant succeeds on time limitation ground. Needless to say, since the claim was rejected on the ground of time limitation, the admissibility of refund on merit is not examined in this proceeding. 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 as well as in the light of order of the Hon'ble Supreme Court dated 10.01.2022 and CBIC's Notification No. 13/2022-Central Tax dated 05.07.2022.



6. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper to the extent of rejection of refund claim(s). Accordingly, I allow the appeal(s) of the "Appellant" without going into 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.

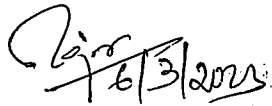
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

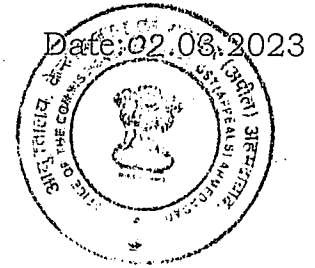

02/03/23
(Mihir Rayka)

Additional Commissioner (Appeals)

Attested



(Tejas J Mistry)
Superintendent,
Central Tax (Appeals), Ahmedabad



By R.P.A.D.

To

M/s. Adani Total Gas Limited,
Heritage Building, 8th Floor, Nr. Gujarat Vidyapeeth,
Ashram Road, Usmanpura, Ahmedabad – 380 014

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Ahmedabad North Commissionerate
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division-VII [S.G. Highway], Ahmedabad North Commissionerate.
4. The Additional Commissioner, Central Tax (System), Ahmedabad North Commissionerate.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
- ✓ 6. Guard File.
- ✓ 7. P.A. File.