



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

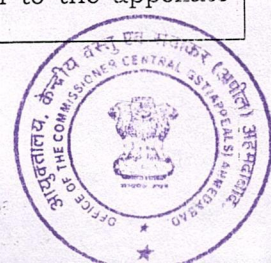


By Regd. Post

DIN NO. : 20220664SW0000510885

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/1436/2021-APPEAL / 1767 To 1772
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-039/2022-23 and 16.06.2022
(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	17.06.2022
(ङ)	Arising out of Order-In-Original No. ZX2403210074126 dated 04.03.2021 issued by The Joint Commissioner, CGST, Division-IV (Changodar), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s En-Tech Laboratories (GSTIN-24AAEFE7307A1Z2) Address:- 33/34, Kushal Estate, Saket Industrial Estate, Moraiya, Sanand, Ahmedabad, Gujarat-382170

(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. En-Tech Laboratories, 33/34, Kushal Estate, Saket Industrial Estate, Moraiya, Sanand, Ahmedabad - 382 170 (hereinafter referred as '*appellant*') has filed the present appeal against Order No. ZX2403210074126 dated 04.03.2021 passed in the Form-GST-RFD-06 (hereinafter referred as '*impugned order*') rejecting refund claim of Rs.3,70,510/-, issued by the Joint Commissioner, CGST & C. Ex., Division - IV, Ahmedabad North (hereinafter referred as '*adjudicating authority*').

2. Briefly stated the facts of the case are that the '*appellant*' is holding GST Registration having GSTIN 24AAEFE7307A1Z2, had filed a refund application dated 05.02.2021 for refund of Rs.3,70,510/- for the tax period July-2017 to March-2018 on account of Supplies made to SEZ Unit / SEZ Developer with payment of Tax. In this regard, a Show Cause Notice was issued to the '*appellant*' under form GST-RFD-08 dated 12.02.2021 on following grounds :

"The refund claim is time barred as per sub section 1 of Section 54 of the CGST Act, 2017"

Thereafter, the *adjudicating authority* has rejected the refund claim vide *impugned order* on the ground that "*Claimant have neither submitted their written submission against the said SCN nor have intended to be heard in person. Therefore, it is clear that the Claimant is in agreement with the objection raised by the Department. Therefore, this office is left with n option but to reject their refund claim which is time barred.*"

3(i). Being aggrieved with said *impugned order* the '*appellant*' has preferred the present appeal on 16.07.2021 on the following grounds :

- *Made zero rated supply i.e. supply to SEZ with payment of tax. Accordingly, Refund application filed on 02.01.2020 vide ARN AA240120004729Q for Refund of Rs.3,70,510/- in accordance with Section 16(3)(b) of the IGST Act, 2017. In this regard, a deficiency memo in Form RFD 03 dated 13.01.2020 was issued to the appellant.*
- *Thereafter, the appellant had filed fresh refund application dated 05.02.2021 vide ARN AA240221018768E after rectification of deficiencies.*



- The refund application was rejected by the Ld. Joint Commissioner treating the revised application filed by the appellant fresh application and thus time barred u/s. 54(1) of the Act.
- The Ld. Joint Commissioner failed to appreciate that the rectified application filed by the assessee is in pursuant to the clarification called for against the original refund application filed and could not have been treated as fresh application.
- The Ld. Joint Commissioner has also erred in law and facts by treating the rectified application as time barred. Section 54(1) clearly states that appellant can file refund application within two years from the relevant date i.e. till 30.03.2020.
- However, due to Covid-19 pandemic the Hon'ble Supreme Court had taken suo motu cognizance of the situation and extended the period of limitation prescribed under the general law or under any specific law. As per order of Hon'ble Supreme Court period from 15.03.2020 to 14.03.2021 is excluded for computing period of limitation. The appellant filed rectified application on 15.02.2021 which was duly in time.

3(ii). The 'appellant' has submitted additional written submission on 08.06.2022. In the additional submission the appellant has referred the provisions of Section 16 of the IGST Act, 2017 and has submitted that they had opted to pay tax on the zero rated supplies and in pursuant to same was eligible to claim refund in accordance to provisions of Section 16(3)(b). Accordingly, applied for refund vide application dated 02.01.2020 for Rs.3,70,506/-. Deficiency memo was issued on 13.01.2020 pointing the defects and direction was given to file fresh application after curing the defects in said application. Accordingly, filed fresh application for Refund of Rs.3,70,506/- on 05.02.2021, for which SCN was issued proposing rejection of refund as time barred. Thereafter, the refund application was rejected vide impugned order considering refund claim as time barred.

3(iii). The 'appellant' has further submitted that in zero rated supply, the effective collection of tax by Union of India is "0" i.e. when the supply is made without payment of tax, the collection of tax by the Union is "0" and if supply is made after payment of tax, the said tax are required to be refunded. Thus the effective collection is "0". The Ld. Dy. Commissioner has failed to appreciate that the supply to SEZ is treated as ZERO RATED SUPPLY because the Union never intended to collect tax on



the said supplies. The transaction being zero rated supplies, the appellant is entitled to receive the refund and the Union cannot engage into profiteering. The appellant has further referred the following case laws :

1. In the case of Ericsson India Private Limited V/s. ACIT, Hon'ble High Court of Delhi held that revenue cannot withhold refund for tax on revenue neutral transaction.
2. CCL Products (India) Limited V/s. Commissioner of Central Excise & Service Tax (Appeals), Guntur - 2012 (11) TMI 651 - CESTAT, Bangalore.

3(iv). The 'appellant' has referred the provision of Section 54 of the CGST Act, 2017 and submitted that there is no time limit prescribed u/s 54 for claiming refund for zero rated supplied for services with payment of tax. The appellant has particularly referred explanation (2)(ba) as provided under 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:

Explanation.- For the purposes of this section,-

(2) "relevant date" means-

[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;]

The appellant has submitted that -

"from reading of the aforesaid provision, it is crystal clear that the appellant can file refund application for zero rated supplies with payment of tax in accordance to Section 16(3)(b) within 2 years from the relevant date. Further the relevant date has been defined in Section 54 of the CGST Act, 2017."

"Attention is drawn to clause 2(ba) of explanation to section 54 as produced hereabove which is applicable in the case of the Appellant. The appellant submits that the said entry was inserted vide Finance Act, 2022."

"The appellant submits that the case of the Appellant is squarely covered by clause 2(ba) of the explanation of Section 54. However,



the time limit for claiming refund has been inserted vide Finance Act, 2022 and has not yet been notified."

"The appellant thus submits that till the relevant date for claiming refund has been notified, no refund can become time barred in cases of zero rated supply with payment of tax."

"without prejudice to above the Appellant states that even if it is presumed that the time limit is 2 years from the date of payment of tax, the Appellant submits that for the period February 18 and March 18, the refund application can be made upto 20th March, 2020 and 20th April, 2020 respectively."

3(v). The appellant has further referred the Cognizance for Extension of Limitation by the Hon'ble Supreme Court, 132 taxmann.com 123 (SC) and submitted that they have filed the application on 05.02.2021 and thus is covered by the order of the Hon'ble Supreme Court for extension of period of limitation. Thus the refund of invoices of February'18 & March'18 are not time barred. Accordingly, appellant has submitted that the refund of Rs.1,25,586/- is required to be sanctioned.

The appellant has further referred and relied upon the case of –

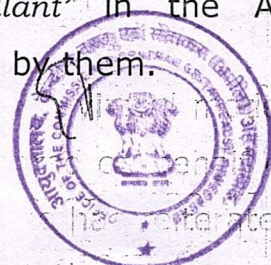
1. GNC Infra LLP v/s. Assistant Commissioner, [2021] 133 taxmann.com 200 (Madras)/[2022] 89 GST 284 (Madras)
2. Saiher Supply Chain Consulting (P) Ltd. v/s. Union of India, 134 taxmann.com 154.

In the light of foregoing submission the appellant has submitted that the order passed by the Ld. Dy. Commissioner is required to be set aside and refund of Rs.3,70,510/- is required to be granted to the appellant.

4. Personal Hearing in the matter was through virtual mode held on 08.06.2022 wherein Shri Hem Chhajed, CA appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has reiterated the written submission made till date and informed that they have nothing more to add into 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 the Appeal Memorandum as well as additional submission made by them.



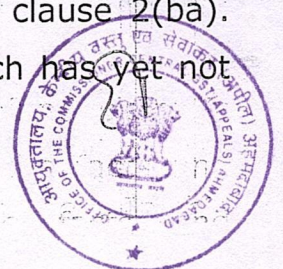
I find that the 'Appellant' for the period from July-2017 to March-2018 made Supplies to SEZ Unit / SEZ Developer with payment of Tax. Accordingly, appellant had filed refund application on 05.02.2021 for which a SCN was issued to them on the grounds that *"The refund claim is time barred as per sub section 1 of Section 54 of the CGST Act, 2017"*. Thereafter, the *adjudicating authority* has rejected the refund claim vide *impugned order* on the ground that *"Claimant have neither submitted their written submission against the said SCN nor have intended to be heard in person. Therefore, it is clear that the Claimant is in agreement with the objection raised by the Department. Therefore, this office is left with no option but to reject their refund claim which is time barred."*

5(ii). The appellant in the present appeal has stated that they had filed refund application 02.01.2020 under ARN AA240120004729Q and in support of same produced copy of Refund application. Further, the appellant has stated that as deficiency memo was issued on 13.01.2020 and as directed they had filed fresh refund application on 05.02.2021. I find that the said refund claim filed under fresh refund application is rejected vide impugned order on the ground of time barred. In this regard, I find that the appellant is making argument that in zero rated supply, the effective collection of tax by Union of India is "0" and even if supply is made on payment of tax, the same are to be refunded. In this regard I find that the appellant has referred the following case laws :

1. In the case of Ericsson India Private Limited V/s. ACIT, Hon'ble High Court of Delhi held that revenue cannot withhold refund for tax on revenue neutral transaction.
2. CCL Products (India) Limited V/s. Commissioner of Central Excise & Service Tax (Appeals), Guntur - 2012 (11) TMI 651 - CESTAT, Bangalore.

In this regard, I find that in the present matter the refund claim is rejected on the ground of time limit. Hence, I find that the facts and circumstances of present case is different from the facts and circumstances of above case law.

5(iii). Further, as regards to refund claim to be filed within 2 years from the relevant date as per Section 54 of the CGST Act, 2017 I find that the appellant has referred clause 2(ba) of explanation to Section 54 and contending that their case is squarely covered by clause 2(ba). However, it has been inserted vide Finance Act, 2022 which has yet not



been notified. The appellant thus contending that till the relevant date for claiming refund has been notified, no refund can become time barred in cases of zero rated supply with payment of tax.

Further I find that the appellant is also contending that even if consider the time limit of 2 years from the date of payment of tax, the period of February'18 and March'18, the refund application can be made up to 20.03.20 and 20.04.20 respectively in terms of order of Hon'ble Supreme Court for extension of period of limitation. Accordingly, the appellant has worked out Refund of Rs.1,25,586/-. Further, the appellant has referred the case of -

1. GNC Infra LLP v/s. Assistant Commissioner in High Court of Judicature at Madras.
2. Sahiyar Supply Chain Consulting (P) Ltd. v/s. Union of India in High Court of Judicature at Bombay.

I find that in the aforesaid case laws the refund claims which were rejected on the ground of time barred are allowed considering within time limit in terms of order of Hon'ble Supreme Court.

5(iv). Further, I have referred the Circular No. 157/13/2021-GST dated 20.07.2021 issued by the CBIC, GST Policy Wing, New Delhi on Subject - *Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021*. The CBIC has obtained legal opinion and various actions/compliances under GST has been broadly categorized and clarified the matter. The relevant para 5 of Circular is reproduced as under:

5. *In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws.*

In view of above, extension of time limit granted by Hon'ble Supreme Court is applicable only in case of appeals to be filed against quasi-judicial order before different appellate authority, Tribunals and Courts or where



proceeding for revision or rectification of any order is required to be undertaken.

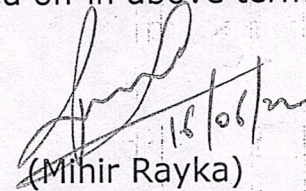
6. Considering the foregoing discussions, I find that in the present matter the refund application for the period July'17 to March'18 filed on 05.02.2021 is beyond two years from the relevant date prescribed under explanation (2) of Section 54 of the CGST Act, 2017 and hence beyond time limit prescribed under Section 54(1) of the CGST Act, 2017. In the appeal memorandum as well as additional submission the appellant relied upon Order of Hon'ble Supreme Court in Misc. application No. 665/2021 in SMW (C) No. 3/2020. I find that Hon'ble Supreme Court vide Order dated 23.09.2021 in the matter of Miscellaneous Application No. 665 of 2021, in SMW(C) No. 3 of 2020, wherein the Apex Court taking suo-moto cognizance of the situation arising due to COVID-19 pandemic has extended the period of limitation prescribed under the law with effect from 15.03.2020. According to said order *"in computing the period of limitation for any suit, appeal, application or proceeding, 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 been expired during the 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."*

7. I find that Hon'ble Bombay High Court in the case of M/s. Saiher Supply Chain Consulting P. Ltd. V/s. UOI (WP (L) No. 1275/2021) in its judgment dated 12.01.2022, has extended the benefit of Hon'ble Supreme Court Order dated 23.09.2021 for determining time limit under Section 54(1) of the CGST Act, 2017 for refund claims also. Consequently, in respect of refund claims for which due date for filing refund claim falls during period from 15.03.2020 to 02.10.2021, two years time limit under Section 54 of the CGST Act, 2017 is to be reckoned, excluding the said period and within 90 days from 02.10.2021. In the subject case, since the claim was filed for the period July'17 to March'18, the due date for filing of refund claim for Feb'18 & March'18 under Section 54 falls in the month of March'20 & April'20, which is within exclusion period granted by Hon'ble Supreme Court and hence claim for Feb'18 & March'18 filed on 05.02.2021 is not hit by time limitation under Section 54 of the CGST Act, 2017. I find that the due date for filing of refund claim



for period of July'17 to January'18 does not fall within exclusion period granted by Hon'ble Supreme Court and hence claim for July'17 to Jan'18 filed on 05.02.2021 is hit by time limit under Section 54 of the CGST Act, 2017. I find that against the judgment of Hon'ble High Court, supra, neither any stay is in operation, nor any appeal is filed by the Department against the above judgements. Therefore, following the judgment passed by the Hon'ble High Court, I hold that the claim for Feb.'18 and March'18 filed on 05.02.2021 is not hit by time limitation prescribed under Section 54 of the CGST Act, 2017. Needless to say, since the claim was rejected on time barred ground, 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. Accordingly, I hereby set aside the *impugned order* to the extent of refund claim rejected for the month of Feb'18 & March'18 only and allow this appeal to that extent only.

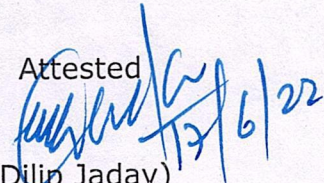
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the '*Appellant*' stand disposed off in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 16.06.2022



Attested

(Dilip Jadav)
Superintendent(Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

To,
M/s. En-Tech Laboratories,
33/34, Kushal Estate, Saket Industrial Estate,
Moraiya, Sanand, Ahmedabad - 382 170

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-IV, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
- ✓ 6. Guard File.
7. P.A. File