



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/250/2022-APPEAL/2694-99
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-054/2022-23 and 20.07.2022
(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	20.07.2022
(ङ)	Arising out of Order-In-Original No. ZT2412210275203 dated 23.12.2021 issued by The Assistant Commissioner, CGST, Division - II (Naroda Road), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shree Siddhi Fragrance (GSTIN-24ACTFS8907R1ZY) Address:- C/222, First Floor, B. G. Tower, O/s Delhi Darwaja, Madhupura, Ahmedabad, Gujarat-380004

(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. Shree Siddhi Fragrance, C/222, First Floor, B. G. Tower, O/s. Delhi Darwaja, Madhupura, Ahmedabad - 380 004 (hereinafter referred as '*Appellant*') has filed the present appeal against Order No. ZT2412210275203 dated 23.12.2021 passed in the Form-GST-RFD-06 (hereinafter referred as '*impugned order*') rejecting refund claim of Rs.6,32,271/-, issued by the Assistant Commissioner, CGST & C. Ex., Division - II Naroda Road, Ahmedabad North (hereinafter referred as '*adjudicating authority*').

2(i). Briefly stated the facts of the case is that the '*Appellant*' is holding GST Registration - GSTIN No.24ACTFS8907R1ZY has filed the present appeal on 11.01.2022. The '*Appellant*' had filed refund application for refund of Rs.6,32,271/- for the period July'19 to September'19 on account of "*Refund on account of ITC accumulated due to Inverted Tax Structure*". In response to said refund claim a show cause notice dated 02.11.2021 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 "*CLAIM IS TIME BARRED AS IT PERTAINS TO THE TAX PERIOD JULY 2019 TO SEPT, 2019. AS IT IS A REFUND AFTER ISSUANCE OF DEFICIENCY MEMO THE ONLY OPTION IS TO REJECT THE ENTIRE 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 08.11.2021 5.44 PM. Thereafter, the *adjudicating authority* has rejected the entire refund claim vide *impugned order* on the grounds as "*Delay in Refund application*". A Remark is also mentioned in the *impugned order* as - "*The submission of the tax payer is not acceptable. There is no extension given to filing of refund claim as per the clarification given in Circular No. 157/3/2021-GST dated 20.07.2021. Therefore, entire refund claim liable for rejection as time barred.*"

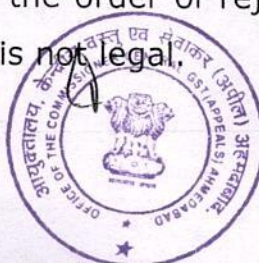
2(iii). Being aggrieved with the *impugned order* the appellant has filed the present appeal on 11.01.2022 wherein stated that -



- In support of refund claim filed on 30.09.21 for the period July'19 to September'19 they have submitted documents as prescribed in Rule 89 read with Circular No. 125/44/2019-GST dated 18.11.2019.
- Thereafter, the department has issued deficiency memo in RFD 03 dated 09.10.21. As can be seen in deficiency memo, the Proper officer has not mentioned nay discrepancies. The Appellant was advised to file fresh refund application.
- The appellant vide letter dated 27.10.21 requested to condone delay occurred in filing of refund application on the ground of Covid-19 pandemic. However, no reply was given. Accordingly, as no response received the appellant has again filed fresh refund application on 01.11.21 along with relevant documents. Thereafter, on 02.11.21 a SCN was issued to the appellant.
- In response to SCN dated 02.11.2021 they have submitted their reply under RFD 09 dated 17.12.2021. The refund application is within time in view of order of Hon'ble Supreme Court in MA No. 665 of 2021 dated 23.09.2021.
- The proper officer without considering the reply of appellant rejected the entire refund claim.
- The refund application for the period July'19 to September'19 filed on 01.11.2021 shall be considered as filed within time in view of order of Hon'ble Supreme Court in the Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020 dated 23.09.2021.

3. Personal Hearing in the matter was through virtual mode held on 05.07.2022 wherein Sh. Tapan N. Patel, Advocate appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has reiterated the submissions made till date and informed that they want to give additional submission/information, which was approved and 7 working days period was granted.

Accordingly, the appellant has submitted the additional written submission dated 11.07.2022 wherein referred the judgment of the Hon'ble Bombay High Court in the case of Saiher Supply Chain Consulting Pvt. Ltd. Writ Petition (L.) No. 1275 of 2021 dated 10.01.2022. The appellant has also referred the CBIC's Notification No. 13/2022-Central Tax dated 05.07.2022. Considering the above judgment and Notification the appellant has stated that the order of rejection of entire refund claim on the ground of time barred is not legal.

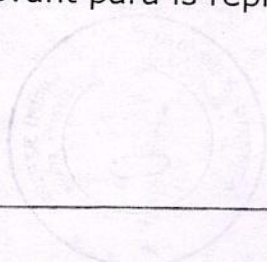


Discussion and Findings :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum as well as additional written submission. I find that the 'Appellant' had preferred the refund application on account of "Refund on account of ITC accumulated due to Inverted Tax Structure" for the amount of Rs. 6,32,271/-. 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" and subsequently entire refund claim was rejected vide impugned order.

4(ii). I find that in this case refund claim was rejected solely on time limitation ground. From the facts of the case I find that the refund claim for the period July'19 to September'19 filed on 01.11.2021 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. In their reply to Show Cause Notice 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 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, 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.

4(iii). Further, I find that the appellant in the present appeal has referred 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.

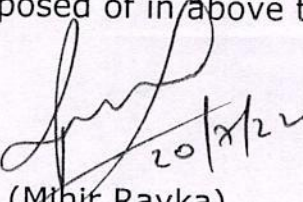
2. This notification shall be deemed to have come into force with effect from the 1st day of March, 2020.

In view of above, I find that in the present matter the claim was filed for the period July'19 to September'19 on 01.11.2021, accordingly, following the order of 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 entire claim for July'19 to September'19 filed on 01.11.2021 is not hit by time limitation prescribed under Section 54 of the CGST Act, 2017. 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.

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 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.

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

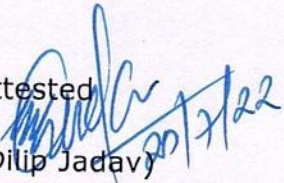
The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 20.07.2022

Attested


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



By R.P.A.D.

To,

M/s. Shree Siddhi Fragrance,
C/222, First Floor, B. G. Tower,
O/s. Delhi Darwaja, Madhupura,
Ahmedabad - 380 004

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

