



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

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DIN NO. : 20220964SW0000555C62

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2439/2021-APPEAL/3541-46
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-061/2022-23 and 02.09.2022
(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	02.09.2022
(ङ)	Arising out of Order-In-Original No. ZV2409210351088 dated 27.09.2021 issued by The Assistant Commissioner, CGST, Division - I (Naroda), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Kairav Petroleums (Legal Name - Jayendra Rasiklal Shah HUF) (GSTIN-24AACHJ4397R1ZK) Address:- 6 Shop, Mahalaxmi Intercity, Nava Naroda, Ahmedabad, Gujarat-382330

(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) 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. Kairav Petroleums, (Legal name – Jayendra Rasiklal Shah HUF), 6 Shop, Mahalaxmi Intercity, Kathwada Road, Nava Naroda, Ahmedabad – 382 330 (hereinafter referred as '*Appellant*') has filed the present appeal against Order No. ZV2409210351088 dated 27.09.2021 passed in the Form-GST-RFD-06 (hereinafter referred as '*impugned order*') by the Assistant Commissioner, CGST & C. Ex., Division – I Naroda, 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.24AACHJ4397R1ZK has filed the present appeal on 11.11.2021. The '*Appellant*' had filed refund application on 06.07.2021 for refund of Rs.9,94,320/- for the period July'2017 to March'2020 on account of "*Refund on account of Supplies to SEZ unit/SEZ Developer (with payment of tax)*". In response to said refund claim a deficiency Memo was issued to the appellant in the Form-GST-RFD-03 dated 13.07.2021 regarding deficiency – "*Supporting document not attached*". Through said deficiency memo it was advised to the appellant to file fresh refund application. Accordingly, the appellant had filed fresh refund claim vide refund application dated 27.08.2021. Thereafter, a Show Cause Notice dated 10.09.2021 was issued to the '*Appellant*'. In response to said SCN the appellant had filed reply under Form-GST-RFD-09 dated 20.09.2021. The appellant had replied that "*they have applied an application for refund of invoices between 01.04.17 to 31.03.20. There are no such invoices generated between 01.04.17 to 31.03.19, however, the invoices dated 11.04.19 to 06.11.19 is applicable for refund. Refund application is filed in time frame according to GST guidelines and laws*". The appellant had also referred the Circular No. 157/13/2021 and had submitted that all limitation period extended till further order of Government. The appellant had also pointed out that there is no specific entry regarding relevant date in case of filing of refund claim for supplies made to SEZ. The appellant had referred the Notification No. 15/2021 and informed that they had initially applied for refund on 06.07.21 so said date may be considered instead of considering date of fresh refund application.



2(ii). Thereafter, the *adjudicating authority* has rejected the refund claim of Rs.6,06,960/- and sanctioned remaining refund claim of Rs.3,87,360/- vide *impugned order* with Remark as -

"claim dt is 27/8/21 hence claim of Rs.606960 claim against inv nos 16/19-20, 40/19-20, 66/19-20, 133/19-20, 152/19-20, 172/19-20, 199/19-20, 215/19-20, 237/19-20 is rejected as time barred".

2(iii). Being aggrieved with the *impugned order* the *appellant* has filed the present appeal on 11.11.2021 wherein stated that -

- They have filed refund application on 06.07.21.
- Due to document deficiency file fresh refund application on 27.08.21
- As per *impugned order* sanctioned refund of invoices dated after 27.08.21. But as per Notification 15/2021-Central Tax they are eligible for refund of invoices dated after 06.07.21. So, they are eligible for further refund amount of Rs.2,53,440/-.
- As per Notification No. 15/2021-Central Tax dated 18.05.21, time period of two years exclude the time period, from the date of filing refund claim till the date of communication of the deficiency in Form GST RFD-03 by the proper officer.

3. Personal Hearing in the matter was through virtual mode held on 14.07.2022 wherein Sh. Kairav Jayendra Shah appeared on behalf of the '*Appellant*' as authorized representative. During P.H. he has reiterated the submissions made till date.

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. I find that the '*Appellant*' had preferred the refund application on account of "*Refund on account of Supplies to SEZ unit/SEZ Developer (with payment of tax)*" for the amount of Rs.9,94,320/-. In response to said refund application deficiency memo was issued to the appellant and accordingly the appellant has filed fresh refund application on 27.08.2021. Thereafter, a Show Cause Notice was also issued to them proposing rejection of refund claim. In this regard, I find that the appellant had filed reply to SCN under Form RFD-09 dated 20.09.21. The appellant had submitted the Bills with sign & stamp of SEZ. The appellant had also replied that no invoices were generated between 01.04.17 to 31.03.2019 and they are eligible for refund in respect of invoices



generated thereafter. Further, I find that the appellant had also pointed out that they had initially filed refund application on 06.07.2021 and therefore, as per Notification No. 15/2021-Central Tax they are eligible for refund considering said date. However, I find that the adjudicating authority vide impugned order has rejected the refund claim of Rs.6,06,960/- without considering the reply of appellant.

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'17 to March'20 was filed on 06.07.21 and after receiving deficiency memo, filed fresh application on 27.08.2021, certain 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.

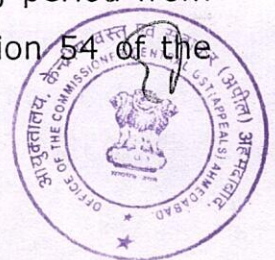
In the above context, I find that the Hon'ble Supreme Court in Misc. Application No. 665/2021 in SMW(C) No. 3/2020 vide Order dated 23.09.2021 ordered that for computing the period of limitation for any suit, appeal, application or proceedings the period from 15.03.2020 till 02.10.2021 shall stand excluded 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, 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 on the subject matter recently 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.*

4(iv). 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 the said period. In the subject case, the claim was filed for the period July'17 to March'20, 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 not hit by time limitation under Section 54 of the CGST Act, 2017.

4(v). I find that in the present matter the claim was filed for the period July'17 to March'20 on 06.07.2021 and the appellant has informed that during the period 01.04.17 to 31.03.2019 no invoices generated, 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 rejection of refund claim of Rs.6,06,960/- 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 Hon'ble Supreme Court dated 10.01.2022 and CBIC's Notification No. 13/2022-Central Tax dated 05.07.2022.

5. 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. 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.

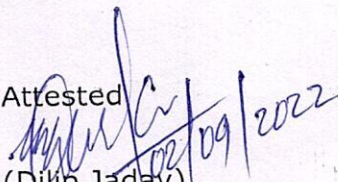
6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Mihir Rayka)

Additional Commissioner (Appeals)

Attested


(Dilip Jadav)

Superintendent (Appeals)
Central Tax, Ahmedabad

Date: 02.09.2022



By R.P.A.D.

To,

M/s. Kairav Petroleums, (Legal name – Jayendra Rasiklal Shah HUF),
6 Shop, Mahalaxmi Intercity, Kathwada Road, Nava Naroda,
Ahmedabad – 382 330

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

