



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी 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.: 20230664SW0000555EC1

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2157/2022 / 1893-98
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-ADC-14/2023-24 and 31.05.2023
(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	01.06.2023
(ङ)	Arising out of Order-In-Original ZR2407210137097 dated 12.07.2021 passed by The Deputy/Assistant Commissioner, Division - III (Sanand), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s TML Distribution Company Ltd., Revenue Servey No. 1, C/o Tata Motor Ltd., Sanand Viramgam Highway, Post Virochan Nagar, 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 .



BRIEF FACTS OF THE CASE:

M/s. TML Distribution Company Limited [GSTIN : 22AACCT9000E1ZT], Revenue Survey No.1, C/o Tata Motors Ltd., Sanand Viramgam Highway, Post Virochan Nagar, Ahmedabad : 382170 (hereinafter referred to as "the Appellant") has filed the present appeal against the Refund Order in FORM-GST-RFD-06 bearing No. ZR2407210137097 dated 12.07.2021 (hereinafter referred to as "the impugned order") passed by the Deputy /Assistant Commissioner, Division-III, Sanand, Ahmedabad North Commissionerate (hereinafter referred to as "the Refund Sanctioning Authority / the Adjudicating Authority") amounting to Rs. 3,63,83,111/- for the period 2019-2020 (March -2020) claiming the refund of excess tax paid on account of non-adjustment or proportionate GST on Credit Notes issued by the appellant due to insufficient output tax liability under Section 54 of the CGST Act, 2017 and CGST Rules, 2017 framed thereunder.

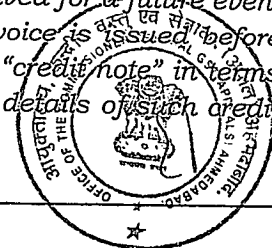
2. The brief facts of the case it that M/s. TML Distribution Company Limited having registered under GSTIN 22AACCT9000E1ZT, and involded in the activity of providing distribution and logistics support to TML throughout India. It provides distribution and logistics support for vehicles manufactured at TML's facilities and has stockyards at some of TML's plants and at different places throughout India. The company helps TML in improving planning, inventory management, transport management and timely delivery. The appellant was operating as Distributor of Passenger Motor Vehicles manufactured by M/s. Tata Motors Limited (TML) at Sanand works upto June 2019. From July 2019 onwards due to change in business scenario, the appellant stopped the Vehicle Billing, hence there was drastic reduction in out put tax liability. However, for sales of FY 2018-19 and 2019-20 GST Credit Notes were continued to be issued which has resulted in negative GST liability during FY 2019-20. The appellant has claimed the refund of excess tax paid of Rs. 3,63,83,110/- (Rupees Three Crores Sixty Three Lakhs Eighty three thousand One Hundred and Ten only) and filed the refund claim vide ARN NO. AA240520008472T in FORM-GST-RFD-01 claiming the refund of excess tax paid on account of non-adjustment or proportionate GST on credit note issued by the appellant due to insufficient output tax liability under the category "Any Other (Specify)" for the tax period 01.03.2020 to 31.03.2020 (March -2020).

Thereafter Deficiency memo DM1 was issued to the appellant on 16/05/2020 on the grounds that "Please submit as per Circular No.125/44/2019-GST & 135/05/2020-GST, DM2 issued on dated 14/06/2020 on the grounds that "Please comply with defi memo issued with supporting documents, annual returns payment details etc. In absence of any docs claim cannot be processed." and DM3 issued on 11/05/2021 on the grounds that "the refund has not been filed under relevant category as per Circular". Accordingly, the appellant has filed their refund application in FORM-GST-RFD-01 vide ARN NO. AA2405210557386 dated 21.05.2021 and the same acknowledged under ARN No. ZQ2406210028741 dated 03.06.2021 by the department. Further, the appellant was issued Show Cause Notice dated 18.06.2021 on the grounds that

"On scrutiny of the refund application filed in online mode, following deficiencies has been noticed :

1. As per Circular No. 137/07/2020 dated 13.04.2020 SL No. 1 :

In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit



F.NO.GAPPL/ADC/GSTP/2157/2022-APPEAL

notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim.

However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST-RFD-01."

2. As per section 34(2) of the CGST Act, 2017:-

Any registered person who issues a credit not in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in out tax liability of the supplier will be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

As per above para, there is no proof submitted by the claimant regarding ITC reversed by the dealers in their returns which can be double benefit of ITC.

3. The Statement-7 submitted by the claimant does not match from the returns of the relevant period showing in Systems."

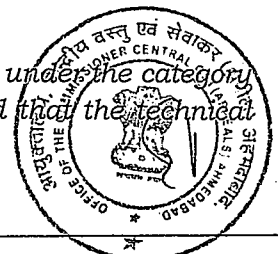
Further, the appellant filed their detailed reply to SCN on 18.06.2021 vide ARN NO. ZZ2406210218818. Further, vide ARN No. AA2405210557386 dated 12.07.2021, the refund sanctioning authority has rejected the claim amounting to Rs. 3,63,83,111/- of the appellant on the grounds that :-

"7. The claimant has mentioned in their reply that they have submitted the declaration of dealers throughout India that they have reversed the ITC for receiving Credit Notes, but neither in the AIO System (GSTN), the declaration has been found not the claimant has attached declarations in their reply. The claimant has furnished the documents physically which is not required as per provision of online refund claim. Further, even in physically submitted documents, there is nowhere mentioned that the dealers have reversed their ITC in their returns.

However,, it appears that the rule stipulated the individual dealer to adjust the credit note which has been carried forward by the claimant. It also appears that the Credit Notes which were issued by M/s. TML Distribution Company Limited have not been fully adjusted by the dealers, instead the dealers have adjusted some of their Input service credit against the credit notes and returned the same to M/s. TML Distribution Company Limited after adjustment for which the said claimant is claiming as refund. Thus the whole process goes against the spirit of section 34 of CGST Act, where Credit Note function is provided.

Thus, in absence of any provision in their favour, the said refund become inadmissible to M/s. TML Distribution Company Limited.

8. The claimant ha mentioned that they can't file their refund claim under the category of "Excess payment of tax", through FORM GST RFD-01 and stated that the technical



F.NO.GAPPL/ADC/GSTP/2157/2022-APPEAL

constraint in GSTN should not come in the way of granting legitimate refund due to the Noticee.

But as per the Circular No. 137/07/2020 dated 13.04.2020 SL No.1, the refund claim should be filed under the category of "Excess payment of tax" which the claimant has not fulfilled the statutory requirement of the above mentioned circular. Further this office is not empowered to bypass the rules set by GSTN and accordingly, the refund becomes inadmissible.

9. Further, definition of Credit Note as per section 34 of CGST Act, 2017 is:

"Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed."

As per above definition, credit note is the way for the facility of above referred situations and the said facilities cannot be availed in a routine manner just to claim refund which is inadmissible otherwise.

10. As per section 54 of the CGST Act, there is no provision to claim refund in the term of Credit Note. Also as per Circular No. 137/07/2020-GST dated 13.04.2020, there are different issues related to Credit Notes refund and accordingly the under mentioned condition is different from the condition in which the claimant had filed refund claim.

"An advance is received by a supplier for a Service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust."

Thus, it appears that the above condition is not fulfilled by the claimant. Therefore, the refund claim appears to be inadmissible.

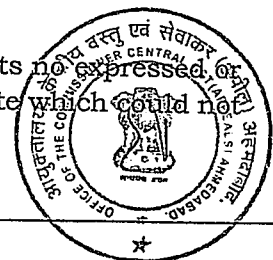
11. The claimant has mentioned that Statement 7 which is attached with refund claim is matching with their returns but in the systems, there is huge anomaly detected by this office. This aspect is also required to be corrected and should be matched in order to qualify for the refund as per the rules and instructions in force.

Therefore, the refund claim is liable for rejection due to non fulfillment of various rules and instructions as discussed herein above.

12. Thus, on the basis of scrutiny of the refund claim documents, the claimants' submissions, and the relevant laws and acts, I find that the claimant is ineligible for a total refund claim of Rs.3,63,83,111/- as the said refund claim is liable for rejection....."

3. Being aggrieved with the aforesaid Refund Rejection Order dated 12.07.2021, the appellant filed the present appeal before the appellant authority on the followings grounds, wherein they contending that

1. the impugned order is erroneous and bad in law as there exists no expressed or categorical restriction, on claim of refund in term of Credit Note which could not



F.NO.GAPPL/ADC/GSTP/2157/2022-APPEAL

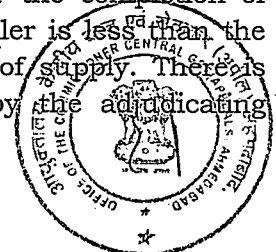
be adjusted against the output tax liability due to insufficient output tax liability under Section 54 of the CGST Act, 2017 or the CGST Rules, 2017. Hence, the appellant is entitled to claim refund of excess tax paid in lieu of Credit Notes issued.

I. Appellant issued Credit Notes in accordance with the provisions of CGST Act, 2017 and CGST Rules, 2017 :

- that Section 34(1) of the CGST Act, 2017 stipulated that a Credit Note may be issued by the supplier to the recipient in cases where tax invoice has been issued for supply of goods or services and taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable for such supply; or where the goods supplied are returned, or where the goods or services are found to be deficient.
- That in the instant case, the appellant offers Discount schemes to the Dealers for a specified period of time, which is issued by the appellant vide Scheme Letter from time to time during the course of transactions. Copy of a sample scheme letter issued by the Appellant for the period of 01.05.2018 to 31.05.2018 is submitted. The scheme letters issued by the appellant provide for Discount Schemes including Exchange Discount, Emerging Market Discount and Corporate Discount.
- That section 15(3) of the CGST Act, 2017 stipulates that the value of taxable supply shall exclude any Discount given by the Supplier, when such discount is given :
 - i. Before or at the time of supply, and discount is recorded in the invoice.
 - ii. After the supply, if such discount is established through an agreement entered into at or before the time of supply and specifically linked to the relevant invoices; and the ITC attributable to the discount has been reversed by the recipient of supply.
- That at the time of supply of the goods by the appellant to the Dealers, the discount provided under the Scheme Letters is not excluded from the taxable value of supply as such Discount is not given before at the time of supply, in accordance with Section 15(3(a) of the CGT Act, 2017.

Hence, the tax invoice raised by the appellant at the time of supply does not exclude the discount value from the taxable value and the dealers make payment for the supply on the entire taxable value.

- That after the completion of the supply, the Discount Schemes becomes applicable upon fulfillment of the conditions as laid down by the Scheme Letter. The Scheme Letter prescribes that such Discounts are to be given by way of Credit Notes issued by the appellant, and that the Dealers are required to reverse appropriate ITC based on the Credit Notes. That, such discounts granted after the supply shall be excluded from the taxable value, as the Discount so provided complies with the condition prescribed under Section 15(3)(b) of the CGST Act,2017 i.e. the Discount is established through an agreement entered into at or before the time of supply and specifically linked to relevant invoices; and the ITC attributable to the Discount has been reversed by the recipient of supply. Therefore, the taxable value after the completion of supply and grant of Discount by the Appellant to the Dealer is less than the taxable value charged on the invoice raised at the time of supply. There is neither any findings not any dispute upon the same by the adjudicating authority.

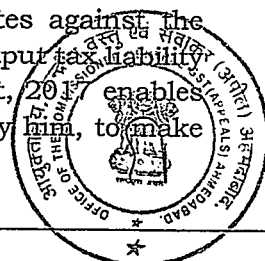


F.NO.GAPPL/ADC/GSTP/2157/2022-APPEAL

- That in the instant case, the taxable value charged by the appellant on the tax invoice is in excess of the actual taxable value of the supply after completion of supply and grant of discount, and hence, the appellant is entitled to issue Credit Notes to the Dealers for such supplies in accordance with Section 34(1) of the CGST Act, 2017.
- Further section 34(2) of the CGST Act, 2017 stipulated that the supplier shall declare the details of such Credit Note in the returns for the month during which such Credit Note was issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier.
- The appellant declared the details of Credit Notes in the GSTR-1 returns for the respective months. Moreover, the Credit Notes were issued not later than September following the end of the financial year in which such supply was made. Section 34(2) further stipulates that such Credit Note is to be adjusted the tax liability of the Supplier. The proviso to Section 34(2) of the CGST Act, 2017 restricts the Supplier from seeking reduction in output tax liability when the incidence of such tax and interest on such supply has been passed on to another person. That in the instant case, the Appellant is unable to adjust the Credit Notes against its output tax liability as the Appellant has not incurred sufficient output tax liability which can be adjusted against the Credit Notes.
- That, the incidence of tax on such supply has not been passed on to another person, as the Dealers have adjusted their Input Tax Credit (ITC) against the Credit Notes. This can be evidenced in the CA Certificate issued under Rule 89(2) of the CGST Rules, 2017. Copy of Certificate dated 20.05.2020 issued by the M/s Tazneen Pathan & Co, Chartered Accountant, Ahmedabad, is submitted.
- That Section 43(1) of the CGST Act, 2017 stipulates that the details of every Credit Note shall be matched with the corresponding reduction in the claim for input tax credit by the recipient in his return for the same or subsequent tax period; and or duplication of claims for reduction in output tax liability. That the Recipients of the Appellant's supply have accepted the Credit Notes issued by the Appellant under Section 34(1) of the CGST At, 2017 in lieu of the discounts granted. There is neither any contradictory finding nor any dispute upon the same by the adjudicating authority. That all the factual and legal aspects were clearly illustrated in the declarations made by the Dealers indicating that the Credit Notes given by the appellant for discounts were accepted by the dealers in their returns. These declarations were physically submitted by the appellant to the department, due to limitation on GST portal on file size and numbers for uploading documents. Copy of these declarations by the dealers are submitted with appeal memorandum.
- That the appellant has not duplicated any of his claims for reduction of output tax liability, which are incorporated and reflected upon reconciliation made by the Chartered Accountant in their GSTR-9C filed on 23.02.2021 for the F.Y -2020, is also submitted herewith.

II. The applicant is entitled to claim refund in lieu of Credit Notes not adjusted against output tax liability:

- That due to change in business scenario, the Appellant stopped Vehicle Billing since July 2019, which drastically reduced the Appellant's output tax liability. Resultantly, the Appellant is unable to adjust the Credit Notes against the output tax liability as the Appellant has incurred insufficient output tax liability in the relevant period. Further, the Section 54 of the CGST Act, 2017 enables any person claiming refund of any tax paid on such tax paid by him, to make



F.NO.GAPPL/ADC/GSTP/2157/2022-APPEAL

an application for refund within two years from the relevant date. That the expression "any tax paid" under section 54 includes "excess amount paid"; and for which credit note has been issued to the receiver of the supply. And in accordance with Section 54 of CGST Act, 2017 the appellant has applied for refund within two years from the relevant date. Section 54 does not stipulate any category or class of persons by whom such refund can be claimed, except that refund can be claimed by any person on tax which has already been paid. Section 54 of the CGST Act, 2017 does not lay down any conditions to be fulfilled for making an application for the claim of refund. The only pre-requisite to be fulfilled is that such tax has already been paid by the persons.

- **That no dispute exists regarding the eligibility of the Appellant in claiming refund of excess tax paid in lieu of Credit Notes, as held by the Supreme Court in catena of judgments.**
- That it is a trite law that a claim for refund on excess tax paid shall be allowed when it is proven by the appellant that the incidence of tax has not been passed on to another person, which can be verified from the declarations given by dealers confirming reversal of proportionate ITC against credit note issued by the appellant. Thus, there is no passing of incidence of tax to the receiver of supplies from the supplier. The appellant placed reliance upon the following case laws in this regard:-

1. Mafatlal Industries Vs Union of Indis [(1997) 5 SCC 536] of the H'ble Supreme Court of India.
2. Commissioner of Central Excise, Madras Vs. M/s. Addison and Co. Ltd [2016 (339) ELT 177 (SC)] of the H'ble Supreme Court of India.

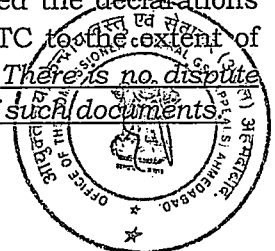
- That in the instant case, the Credit Notes was issued in accordance with Section 34 of the CGST Act, 2017 and Rule 53 of the CGST Act, 2017 and the appellant's refund application was also accompanied with the requisite documents, including Certificate issued by the Chartered Accountant certifying that the incidence of such tax has not been passed on to any other person under Rule 89(2) (m) of the CGST Rules, 2017. The Credit Notes issued or the Certificate issued by the Chartered Accountant cannot be disputed as there is no question regarding their genuineness in the SCN or in the impugned order.

III. The refund of excess tax paid will not result in unjust enrichment of the appellant :

- For the purpose of unjust enrichment, the appellant made reliance upon the following judgments / case laws :

 1. Indian Council for Enviro Legal Action Vs. Union of India [(2011) 8 SCC 161] of the H'ble SC of India
 2. Mafatlal Industries Ltd Vs. Union of India (Supra) of H'ble SC of India;
 3. Commissioner of Central Excise, Rohtak Vs. Saint Gobain Gyproc India Ltd., Central Excise Appeal No.5 of 2017 (O&M) of the Punjab and Haryan High Court.
 4. General Commodities (P) Ltd. Vs. Commissioner of Service Tax, Bangalore [(2010) 25 STT 92 (Bang. - CESTAT)]

- That the appellant has submitted Certificate issued by their Chartered Accountant certifying that the incidence of the tax has not been passed on to any other person and the appellant has physically submitted the declarations from the Dealers confirming the reversal of proportionate ITC to the extent of GST indicated in the credit notes issued by the appellants. There is no dispute raised by the adjudicating authority regarding genuineness of such documents.



IV. The impugned Order has traversed beyond the scope of Show Cause Notice:

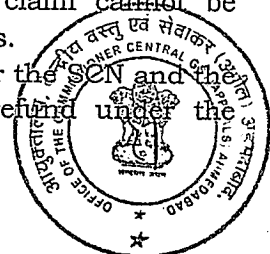
- That, in the instance case, the SCN alleged the following grounds for rejection of refund :
 - i. Refund was claimed under Category of "Any other, if any", whereas, the claim of refund was to be made under the Category of "Excess Payment of Tax, if any" in accordance with Circular No. 137/07/2020 dated 13.04.2020.
 - ii. No proof was submitted by the claimant regarding ITC reversed by the dealers in their returns in accordance with Section 34(2) of the CGST Act, 2017.
 - iii. Statement 7 submitted by the claimant did not match with the returns of the relevant period showing in systems.

The impugned order confirms the above-mentioned grounds for rejection of refund alleged in the SCN. However, it alleges an additional ground that Section 54 of the CGST Act, 2017 does not provide for claim of refund in the terms of Credit Note. Thus, the adjudicating authority traversed beyond the scope of the allegations levied in the SCN and this *per se* makes the order not sustainable in law. By creating an additional ground at the stage of adjudication in the impugned order, the adjudicating authority has violated the Principles of Natural Justice imbibed in the SCN.

- That, it is a settled principle in law that an adjudicating order cannot traverse beyond the scope of SCN and for this the appellant made reliance on the following judgments/case laws:
 1. R. Ramadas Vs. The Joint Commissioner of Central Excise, Puducherry & Anr. W.P. No. 14825 of 2016 of Madras High Court.
 2. Saurabh Organics (P.) Ltd Vs. Commr. Of Central Excise, Thane, Final Order Nos. A/639-641/2011-WZB/C-II (EB), Mumbai Bench CESTAT.

V. Procedural Infraction cannot be a hindrance in the grant of bona fide claim of refund :

- That, though the Appellant has submitted every documents required under the CGST Act, 2017 and the CGST Rules, 2017. However, this has ironically became a reason of denial especially when neither any finding nor dispute to the following effect exists:
 - a. Credit notes issued by the Appellant are not in accordance with law and they have not paid excess tax on supplies made to dealers;
 - b. Incidence of tax has been passed as input tax credit has not been reversed by the recipient.
- That, the credit notes issued and non-passing of incidence of tax is in fact evident from the declaration obtained from the dealers, however, presuming without admitting procedural infractions cannot be a ground for denial of refund. Further, it has been consistently held that substantial benefit under Tax law cannot be denied solely on the basis of procedural infractions. Once the claim of refund is established by the claimant, the claim cannot be disallowed merely on the basis of technical / procedural lapses.
- That, there is no dispute about any substantive aspect, rather the SCN and the impugned order alleged that the appellant has claimed refund under the



F.NO.GAPPL/ADC/GSTP/2157/2022-APPEAL

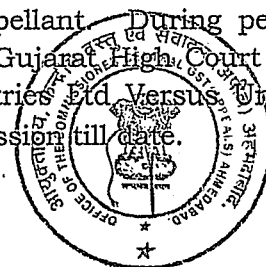
- Category of "Any Tax, if any" and not under the Category of "Excess Payment of Tax, if any" as prescribed in Circular No. 137/07/2020 dated 13.04.2020.
- That, it is beyond the control of the appellant to submit the claim of refund under the Category of "Excess Payment of Tax, if any", as the GST portal requires the Appellant to enter the relevant Challan No. over which excess tax has been paid. The fact is that excess tax has not been paid over any particular Challan or Invoice and when none of such aspect exists there is no ground to deny the legitimate refund at the first place.
 - The inability of the appellant to file the refund claim under the Category of "Excess Payment of Tax, if any" is merely a technical aspect, and the same cannot be considered as ground to reject the appellant's refund claim.
 - The appellant has established beyond doubt its right to claim refund of excess tax paid in lieu of Credit Notes and has submitted all the relevant documents evidencing the refund claim.

VI. Without prejudice to the above, rejection of refund will amount to collections of duty without the authority of law.

- That, it is settled position of law that excess payment of tax / reversal of credit is to be treated as collection without the authority of law. Accordingly, the Courts at numerous occasions have categorically held that the excess amount of tax paid is liable to be refunded to the assessee, as the same has been collected without the authority of law.
- Further, the article 265 of the Constitution of India prohibits the imposition of tax save by authority of law. It is further submitted that the GST paid in excess by the appellant, arising from the negative output tax liability adjusted against the Credit Notes; is a tax paid in excess without the authority of law, and is to be refunded to the Appellant. For this, the appellant rely upon (i)
 1. the decision of the H'ble Supreme Court in case of *Salonah Tea Company Ltd Etc Vs. Superintendent of Taxes Now-Gong and Ors.* 1988 SCR (2) 474, wherein it has been held that taxes or money realized without the authority of law should be refunded.
 2. *Joshi Technologies International Vs. Union of India* 2016 (339) ELT (21) Guj
 3. *Binani Cement Ltd Vs. Union of India* [2013 (288) ELT 193 (Guj.)]
 4. *Hero Cycles Ltd Vs. Union of India* [2009 (240) ELT 490 (Bom.)]
- In the present case, the appellant has paid excess GST on initial supply which could not be adjusted with subsequent GST liability due to change in business scenario. That, such excess GST paid by the Appellant, which could not be adjusted against subsequent GST liability, is collected without the authority of law, hence as per Article 265 of the Constitution of India, the excess GST collected is without the authority of law and is liable to be refunded to the appellant.

Personal Hearing:

4. Personal hearing in the matter was held on 02.12.2022. Mr. Anandodaya Mishra and Mr. Rohit Lavvani, have attended personal hearing personally on behalf of the appellant as the authorized representative of the appellant. During personal hearing they have submitted copy of decision of the H'ble Gujarat High Court in the case of R/SCA No. 15473/2019 of M/s. Britannia Industries Ltd Versus Union of India. They have nothing more to add to their written submission till date.



Discussion and findings:-

5. I have carefully gone through the present case, written submissions made by the appellant in their appeal memorandum and additional submissions during the personal hearing and available records. The issues before me is that the case is to be decided on merits as to whether the Refund Order / impugned order passed by the adjudicating authority is legal and proper or not, and required to be set aside or otherwise?

6. I find that the 'Appellant' had preferred the refund application before the refund sanctioning authority. The refund sanctioning authority [Adjudicating Authority] has rejected the refund application vide impugned order mentioning on the following main grounds that:-

- (i) Refund was claimed under Category of "Any other, if any", whereas, the claim of refund was to be made under the Category of "Excess Payment of Tax, if any" in accordance with Circular No. 137/07/2020 dated 13.04.2020;
- (ii) No proof was submitted by the claimant regarding ITC reversed by the dealers in their returns in accordance with Section 34(2) of the CGST Act, 2017.
- (iii) Statement 7 submitted by the claimant did not match with the returns of the relevant period showing in systems.

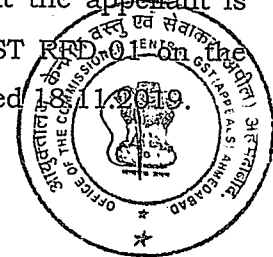
Accordingly, the appellant has preferred the present appeal. Further, I find that the adjudicating authority has not disputed about the credit notes issued under Section 34 of the CGST Act, 2017 by the appellant. Further, I refer to the relevant portion to the Section 54 of the CGST Act, 2017, which is reproduced as under:

6.1 Section 54 of the CGST Act, 2017 states as under:

"Section : 54 (1) Any persons 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:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section(6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed..."

From the above, I find that according to Section 54(1) of the CGST Act, 2017, any persons claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application. I also find that the appellant is required to file online their refund application through FORM GST RFD-1 on the common portal as per CBI &C's Circular No. 125/44/2019-GST dated 11.01.2019.



F.NO.GAPPL/ADC/GSTP/2157/2022-APPEAL

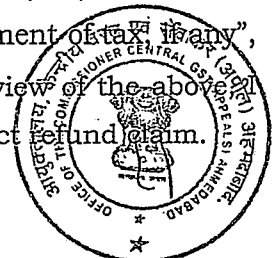
6.2 Further, I refer to the Circular No. Circular No. 137/07/2020 dated 13.04.2020 vide which clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST laws. The relevant extract of para-2 of the Circular No. 137/07/2020 dated 13.04.2020, is reproduced as under:

“

Sr No	Issue	Clarification
1
2
3	Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns	In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a “credit note” in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim in such a case. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under “Excess payment of tax, if any” through FORM GST RFD-01.

.....”

I find that in the impugned order, the adjudicating authority has stated that the appellant has filed their refund application under category of “Any other (if any)” instead of category under “Excess payment of tax, if any” through FORM GST RFD-01 as per above circular. Here, I find that the Circular No. 137/07/2020 dated 13.04.2020 issued by the CBI & C, New Delhi, the CBI & C, New Delhi has clarified the certain issues and according para-2 of this circular, the appellant is required to file their instant refund claim under “Excess payment of tax, if any” through FORM GST RFD-01, in case, where there is no output liability against which a credit note can be adjusted. The appellant contended that it is beyond the control of the appellant to submit the claim of refund under the category of “Excess Payment of Tax, if any” as the GST portal requires to appellant to enter the relevant Challan Number over which excess tax has been paid. In the instant case, I find that if the subject refund claim is not filed or claimed under the category of “Excess payment of tax, if any” as per the above referred Circular, the departmental officer / the refund sanctioning authority is not empowered to bypass the Circular / Rules set by GSTN. Thus, the appellant has not fulfilled the statutory requirement of the Circular No. 137/07/2020 dated 13.04.2020 by not filing their claim in the category of “Excess payment of tax, if any”, instead they have filed in the category of “Any other, if any”. In view of the above, I find that the adjudicating authority has correctly rejected the subject refund claim.



F.NO.GAPPL/ADC/GSTP/2157/2022-APPEAL

6.3 I have gone through the submissions of the appellant, in the instant case, I find that the appellant contended that they have submitted the declarations of of the appellant viz. (1) M/s. Trivandrum Motors Pvt Ltd, Thiruvananthapuram, dated 30.08.2021 (2) M/s. Hyson Motors (P) Ltd., Thrissur, dated 30.08.2021 and (3) M/s. KVR Dream Vehicles Pvt. Ltd, Kannur, dated 22.04.2021 have submitted their declaration that

"This is with the reference to post sale discount passed by TML Distribution Co. Ltd (in short "TMLDC") through various GST credit notes issued from time to time.

As communicated by TMLDC through various scheme letters and as required under Section 15(3)(b)(ii) of the CGST Act, 2017, we confirm that, we have ensured necessary compliance by reversing proportionate ITC equivalent to GST amount indicated in such GST credit notes.

Details of Credit Notes issued by TMLDC is enclosed as Annexure to this letter.

This declaration is being given for the FY 2019-20 on specific request from TMLDC."

From the above declarations, I find that the dealers have ensured to comply by reversing proportionate ITC equivalent to GST amount indicated in such GST credit notes issued by TMLDC as per Annexure, but failed to submit the relevant proof of ITC reversal and documentary evidences of reversal of ITC (one to one of each Credit Note) made by them and exact amount of ITC reversed by them. It is also stated that in the impugned order by the adjudicating authority that the dealers have adjusted some of their Input Service Credit against the Credit Notes and returned the same to the appellant after adjustment, which I find, are not as per the provisions of Section 34 of the CGST Act, 2017, where Credit Note function is provided.

6.5 I further refer to the Section 34 of the CGST Act, 2017, which is reproduced as under:-

Section 34 of the CGST Act, 2017:

"34. Credit and debit notes

- (1) Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issued to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed.*



F.NO.GAPPL/ADC/GSTP/2157/2022-APPEAL

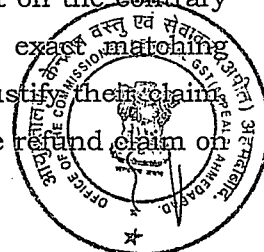
(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declared the details of such credit note in the return for the month during which such credit note has been issued but not later than the thirtieth day of November following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

PROVIDED that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

(3) & (4)

From the above and submissions of the appellant and available records, I find that the appellant has issued Credit Notes under Section 34 (1) of the CGST Act, 2017 to their dealers under the provisions of the CGST Act, 2017. I also find that the appellant has submitted the Chartered Accountant viz. Tazneen Pathan & Co., Ahmedabad's certificate dated 20.05.2020 certifying that " This is to certify that in respect of the refund amounting to Rs. 3,63,83,111/- (Rs. Three Crore Sixty Three Lakhs Eighty Three Thousand Hundred and Eleven only/-) claimed by M/s. TML Distribution Company Limited, GSTIN-24AACCT9000E1ZT for the period 2019-20, the incidence of tax and interest, has not been passed on to any other person.", which I find sufficient document on the part of the appellant for the purpose of unjust enrichment, however, the dealers on the part of the appellant failed to provide evidentiary proof of ITC reversal and exact amount in respect of ITC reversal made by them. On the basis of submission of only Chartered Accountant's Certificate without submitting evidentiary documents for exact amount of ITC reversal by their dealers, I find that the appellant has not complied with the provisions and entitlement for claiming their refund amount, as excess tax paid on account of non-adjustment or proportionate GST on Credit Notes issued by the appellant due to insufficient output tax liability under Section 54 of the CGST Act, 2017 and CGST Rules, 2017 framed thereunder. Hence, I find that the adjudicating authority has correctly rejected the refund claim on the ground discussed above.

6.7 Further, the adjudicating authority in the impugned order vide para-11 stated that there is huge anomaly detected between Statement-7 submitted by the appellant alongwith the refund claim and their returns. In this regard, I find that the appellant has stated and confirmed that in their reply to the Show Cause Notice dated 27.06.2021 to the adjudicating authority that the amount mentioned in Statement-7 is matching with GSTR-1 returns filed during FY 2019-20 which was not considered by the adjudicating authority while passing the impugned order, but on the contrary the appellant has not mentioned or tabulated or calculated the exact amount between Statement-7 and month-wise GSTR-1 returns to justify their claim. Thus, I find that the adjudicating authority has correctly rejected the refund claim on the above ground.



F.NO.GAPPL/ADC/GSTP/2157/2022-APPEAL

6.8 Thus, I find that the appellant has not complied with the law and not fulfilled the required condition for their refund entitlement and eligibility under CGST Act and CGST Rules made there under and the adjudicating authority has rightly rejected the refund claim under the provisions of CGST Act, 2017 and rules made thereunder. I find that the appellant's contention that the adjudicating authority has over looked the submissions of the appellant and not considering their refund claim filed under category of "Any other, if any" instead of "Excess payment of tax", which are not sustainable and amounts to non entitlement of their eligibility of refund claim.

7. Considering the above facts and in view of above discussions, the *impugned order* passed by the *adjudicating authority* is found legal and proper. Accordingly, I hereby reject the appeal of the "*Appellant*" in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017 and as per Circular No. 137/07/2020 dated 13.04.2020.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeal filed by the appellant stands disposed of in above terms.

(Mihir Rayka)
31/05/23

Additional Commissioner (Appeals)
Date: 31.5.2023



Attested
(Tejas J Mistry)
Superintendent,
Central Tax (Appeals), Ahmedabad
By R.P.A.D.

To
M/s. TML Distribution Company Limited [GSTIN: 22AACCT9000E1ZT],
Revenue Survey No.1, C/o Tata Motors Ltd.,
Sanand Virangam Highway, Post Virochan Nagar,
Ahmedabad : 382 170.

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-III, Sanand, Ahmedabad North Commissionerate.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North Comm'te.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.

✓ Guard File / P.A. File.

