



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/149/150/151/152/153/2024 / 2513-19
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-149 to 153/2023-24 and 29.02.2024
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	05.03.2024
(ङ)	Arising out of Order-In-Original Nos. ZH2408230185490 dated 11.08.2023, ZE2408230188734 dated 12.08.2023, ZM2408230188756 dated 12.08.2023, ZG2408230188767 dated 12.08.2023 and ZE2408230188745 dated 12.08.2023 passed by The Assistant Commissioner, CGST, Division-II, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Ram Wood Work (Shobhrajmal Motihar- Legal Heir of Late Kamlaben Shobhrajmal Motihar) (GSTIN: 24AOMPM3965N1Z9) 25, Narnarayan Estate, Near Soni Chawl, Bapunagar, Ahmedabad, Gujarat-380023

(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 <u>twenty five per cent</u> 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 अपील्य 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. Ram Wood Works (Legal Name: Shobhrajmal Motihar- Legal Heir of Late Kamlaben Shobhrajmal Motihar), 25, Narnarayan Estate, Near Soni Chawl, Bapunagar, Ahmedabad, Gujarat-380023 (hereinafter referred to as "the appellant"), holding GSTIN 24AOMPM3965N1Z9 has filed following appeals against the Refund Sanction/Rejection order in the form RFD-06 Orders (hereinafter referred as 'impugned orders') passed by the Assistant Commissioner, CGST, Division - II, Ahmedabad North (hereinafter referred as 'adjudicating authority').

Table "A"

Appeal Nos.	Date of filing of Appeal	RFD-06 Order Nos. / Date of Order	Amount of Refund Rejected Rs.	Refund Claim period	Relevant date for filing refund	Due date of filing refund	Refund filed on
GAPPL/ADC/GSTP/149/2024	06.12.23	ZH2408230185490 Date: 11.08.2023	8,588	01.10.18 to 31.10.18	20.11.18	20.11.20	31.05.23
GAPPL/ADC/GSTP/150/2024	06.12.23	ZE2408230188734 Date: 12.08.2023	24,946	01.11.18 to 30.11.18	20.12.18	20.12.20	27.05.23
GAPPL/ADC/GSTP/151/2024	06.12.23	ZM2408230188756 Date: 12.08.2023	42,138	01.12.18 to 31.12.18	20.01.19	20.01.21	27.05.23
GAPPL/ADC/GSTP/152/2024	06.12.23	ZG2408230188767 Date: 12.08.2023	63,743	01.01.19 to 31.01.19	20.02.19	20.02.21	27.05.23
GAPPL/ADC/GSTP/153/2024	06.12.23	ZL2408230188745 Date: 12.08.2023	95,929	01.02.19 to 31.03.19	20.03.19 & 20.04.19	20.03.21 & 20.04.21	27.05.23



2(i). Brief facts of the case is that the appellant is a proprietorship firm with the name of M/s Ram Wood Works' having GST No. 24AOMPM3965N1Z9. He was engaged in manufacturing of wooden item like wooden Boxes and similar wooden articles of furniture etc. In all these 05 (Five) appeals they have filed refund applications on account of ITC accumulated due to inverted tax structure for the period shown in Table-A mentioned above under Section 54 of the CGST Act, 2017. In response to their refund applications they received show cause notices directing them to show cause as to why the refund claims should not be rejected on the ground that the entire refund claimed in the above mentioned application is time barred.

2(ii). In response to the Show Cause Notice's the appellant have submitted the reply to SCN's. Further the adjudicating authority has confirmed the SCN's on the below mentioned grounds and rejected their refund applications by passing impugned orders.

- *On account of death of taxpayer this refund application could not be filed within due time which itself is not a valid reason of delay;*

- that refund was not filed on time due to unawareness of the tax payer. They came to know about the manners of refund under inverted duty structure only after ASMT-12 was issued to them on 24.03.2023. So, this reason for delay in filing refund application is not viable and hence not acceptable;
- Further, they claim that in provision of section 54(8) of the Act, it has been mentioned that refund instead of being credited to the Consumer welfare Fund, Refund amount shall be paid to the applicant, if such refund amount is related to clause 3 of section 54 which includes inverted tax structure taxpayer. Section 54(8) doesn't say about the time limit or manner of refund application is filed or processed. Hence, claimant's resort to this section doesn't relate to the query raised in Show Cause Notice ZL2407230368322 dated 26.07.2023;
- they have mistaken the meaning of "Relevant Date" under section 54(3) of CGST Act, 2017 and hence failed to file the application for refund under prescribed time limit.

3. Being aggrieved with the "impugned orders" the 'Appellant' has filed the present appeals on the following grounds -

- Refund rejection Order u/s 54 of the Act is framed in the name of death assessee which itself not allowable in the eyes of law. Thus, rejection order needs to be set aside;

The learned AO has erred both on fact and in law as no personal hearing provided to the appellant before adverse order which is violation of provision of section 75 of the Act. Thus, rejection order must be set aside;

The learned AO has erred both on fact and in law by rejecting reason of delay in filing of refund application which is on account of death of taxpayer which itself sufficient reason of delay. Thus, the reason of delay, rejected by the AO in mechanical manner which is against the principle of natural justice;

- The learned AO has erred both on fact and in law by rejecting refund application as same is not filed within two years, ignoring the fact that such time period is directory in nature not mandatory as held by the Madaras High Court. Hence, rejection order needs to be deleted;

In view of the above the appellant pray to allow the refund application.

Virtual Hearings:

4. Virtual Hearings in the matter for all aforesaid appeals was held on 27.02.2024 wherein Mr. Narendra N. Tekwani, C. A., appeared on behalf of the 'Appellant' as authorized representative. During P.H. he submitted that all the five appeals are identical. It is further submitted that since the proprietor of the



firm is expired and there after the refund claims were filed as per order of ASTM-10. Thus the order passed by the Ld. Adjudicating Authority is not legal and proper and requested to allow appeal. He further reiterated the written submissions and requested to allow appeal.

DISCUSSION AND FINDINGS:

5. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is (i) whether the appeal has been filed within the prescribed time- limit and (ii) whether the impugned order(s) passed by the Adjudicating Authority, rejecting the entire refund claimed in the above mentioned applications on the ground that all the refund applications are time barred as per Section 54 of the CGST Act, 2017 or otherwise?

6(i). First of all, I would like to take up the issue of filing the appeal and before deciding the issue of filing the appeal on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:

SECTION 107. Appeals to Appellate Authority. — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2)

(3)

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

6(ii). It is observed from the submission of appellant that in the instant case the appeal has been filed online on 06.12.2023 and submitted the copy of order appealed against, within 7 days of filing appeal. Accordingly, in light of provisions of Rule 108 of the CGST Rules, 2017 the appeal has been filed on 06.12.2023 i.e. appeal filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. Though the delay in filing the appeal is condonable only for a further period of one month provided that the appellant was prevented by sufficient cause from presenting the appeal is shown and the delay of more than one month is not condonable under the provisions of sub section (4) of Section 107 of the Central Goods and Service Tax Act, 2017.



6(iii). In the present matter, the "impugned order" is of 11.08.2023 so, the normal appeal period of three months was available up to 11.11.2023 whereas, the present appeal is filed on 06.12.2023. In this regard, it is found that in the present matter the appellant has submitted the application for condonation of delay and requested to condone the delay. In light of Section 107(4) of the CGST Act, 2017 by condoning the delay of one month the last date for filing of appeal comes to 11.12.2023. In the present matter the appeal is filed on 06.12.2023. Accordingly, in view of above request of appellant to condone the delay in filing present appeal, I hereby condone the delay. Accordingly, the present appeal is considered to be filed in time. Accordingly, I am proceeded to decide the case.

7. While carefully gone through the facts of the case, grounds of appeal, submissions made by the "appellant" in their appeal memorandum in all the instant case(s) and documents available on record it is observed that the facts and grounds in all the appeals are same. Since the issue involved in all these present five appeals are identical in nature, all these appeals are disposed of, through a common order.



8(i). I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. The present appeals are filed to set aside the impugned order's wherein the adjudicating authority has rejected the applications for refund of amount as per Table "A". The grounds in appeal is that the appellant has filed refunds claim after expiry of more than four years from the relevant date (i.e. time barred) in view of Sub Section (1) of Section 54 of CGST Act, 2017. In view of above, I refer to provisions of CGST Act, 2017 relating to subject case which is as under :

Section 54 of the CGST Act 2017:

(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:

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.

.....

(14) Notwithstanding anything contained in this section, no refund under subsection (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation.- For the purposes of this section,-

(1) "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) "relevant date" means-

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,-

(e) [in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;]

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than-

(i) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

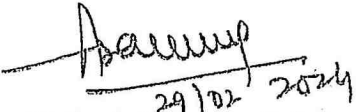
8(ii). It is a clear provision in above referred Section 54(14)(2)(e) that the relevant date to file refund claim will be the due date for furnishing or return under Section 39 for the period in which such claim for refund arises in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section 3 of Section 54 of the CGST Act 2017 . Therefore, it is clear that the appellant taken more than four years in filing the refund applications. Therefore, the refund is filed beyond the time limit prescribed to file refund application as the claim is to be filed by the appellant on or before expiry of two years, from the relevant date as mentioned at Table "A". Even after availing extension under pursuance of Notification No. 13/2022-CT dated 05.07.2022 the refund applications are time barred.



9. In the instant case the appellant contended that the due to owner's death on 30.03.2020 and because of this business operation was closed and they were not aware of any GST refund they could not filed refund application within due time. However it is observed that due to unawareness of the appellant had not filed the refund on time. They came to know about the manners of refund under inverted duty structure only after ASMT-12 was issued to them on 24.03.2023. So, this reason for delay in filing refund application is not legal and proper as they have filed refunds claim after expiry of more than four years from the relevant date.


10. In view of the above discussions, I do not find any merit in the contention of the appellant so as to intervene in the impugned order passed by the adjudicating authority. Accordingly, the impugned orders of the adjudicating authority are legal and proper hence upheld.

अपील कर्ता 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.


29/02/2024
(Adesh Kumar Jain)

Joint Commissioner (Appeals)
Date: 29.02.2024

Attested


29/02/24
(Sandheer Kumar)
Superintendent (Appeals).

By R.P.A.D.
M/s. Ram Wood Works,
25, Narnarayan Estate,
Near Soni Chawl, Bapunagar,
Ahmedabad, Gujarat-380023.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C. Ex., Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad South.
4. The Deputy/ Asstt. Commissioner, CGST & C. Ex, Div.-II Ahmedabad North.
5. The Deputy/ Asstt. Commissioner (RRA), CGST & C. Ex, Ahmedabad North
6. The Superintendent [Systems], CGST (Appeals), Ahmedabad.
7. Guard File/ P.A. File.

