



सत्यमेव जयते

आयुक्तकाकार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
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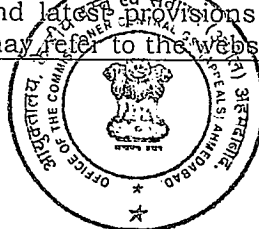


**By Regd. Post**

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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/114/2023 / 25511 - 80
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-19/2023-24 and 28.06.2023
(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	30.06.2023
(ङ)	Arising out of Order-In-Original No. ZR2407220135954 dated 11.07.2022 passed by The Assistant Commissioner, Division-I, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Jignesh Ramgopal Agrawal (Chandramani Sales Agency), 134, Camp Sadar Bazar, Cantonment, Ahmedabad-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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



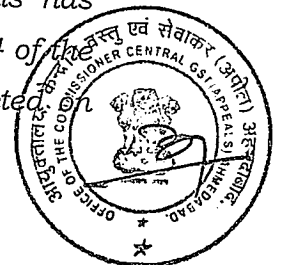
**ORDER-IN-APPEAL****Brief Facts of the Case:**

Jignesh Ramgopal Agrawal, [Trade Name : M/s. Chandramani Sales Agency] 134, Camp Sadar Bazar, Cantonment, Ahmedabad : 380 004 (hereinafter referred as 'Appellant') has filed the present appeal against refund Order No. ZR2407220135954 dated 11.07.2022 passed in the Form-GST-RFD-08 (hereinafter referred as 'impugned order') rejecting refund claim of Rs. 22,964/-, issued by The Deputy/ Assistant Commissioner, CGST & CX, Division-I-Naroda, Ahmedabad North Commissionerate (hereinafter referred as the 'adjudicating authority/refund sanctioning authority').

2(i). Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No. 24AGBPA8015A1ZD has filed the present appeal on 10.01.2023. The appellant is a proprietor of M/s. Chandramani Sales Agency, is engaged in supplying the goods and filing their quarterly returns in Form CMP-08 on regular basis. During the period i.e. April 2021 to March 2022 involved in the instant case, the liability was being discharged regularly through CMP-08 (Quarterly Returns). The appellant had also filed their Annual Return in FORM GSTR-4 on 9.5.2022 for the Financial Year 2021-22 (i.e. April 2021 to March 2022). However, while filing the GSTR-4 (Annual Return) the GST liability of Rs. 11,481/- (CGST) + Rs. 11,481/- (SGST) was generated though it was discharged regularly while filing quarterly returns. In view of the above, the appellant had once again discharged the said GST liability vide Challan dated 09.05.2022 for Rs. 23,404/- (CGST Rs.11,482/- + SGST Rs. 11,482/- + Fees Rs. 440). Since, the appellant discharged GST liability of Rs. 22,964/- twice. The 'Appellant' in the appeal memo stated that they had filed refund application amounting to Rs. 22,964/- on account of "excess payment of tax" in Form GST-RFD-01 dated 13.06.2022 vide ARN No. AA2406220475766 for the period March-2022 (F.Y 2021-22) under the category "Any other". In response to said refund claim a Show Cause Notice bearing No. ZY2407220016654 dated 01.07.2022 in the FORM RFD-08 was issued to the 'Appellant'. In the said SCN, it was mentioned that "this has reference to your abovementioned application for refund, filed under Section 54 of the Act. On examination, it appears that refund application is liable to be rejected on account of following reasons:

Sr. No	Description	Amount inadmissible
1	Other	22964

2(ii) The appellant vide ARN NO. AA2406220475766 has filed their reply on dated 07.07.2022 to the aforesaid Show Cause Notice that "Negative Liability Statement is attached. Please issue refund as per government advisory. Supporting Documents : No supporting documents found."

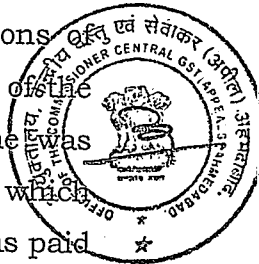


**2(iii)** Subsequently, the adjudicating authority has granted personal hearing to the appellant on 08.07.2022 which was not attended by the appellant. Further, the adjudicating authority vide impugned order rejected the refund claim application of the appellant on the grounds that:

*"since the tax payer failed to upload Negative Liability Statement or any other documents, their reply filed to SCN is not proper & legal in order to determine refund amount. Further, they have not remained present during the personal hearing granted to them on 08.07.2022. As the claimant has not uploaded any supporting documents in reply to SCN in support of their claim, the claim cannot be considered."*

**3.** Being aggrieved with the impugned order No. ZR2407220135954 dated 11.07.2022, the appellant filed the present appeal online on 19.10.2022 (appeal physically submitted on 10<sup>th</sup> January 2023) and contended on the following grounds:

- The ground based on which the refund has been rejected, is improper, invalid and unjustified and thereby the impugned order is not sustainable;
- In the present case, the adjudicating authority ought to have sanctioned the refund claim in as much as, there is no dispute about the fact that the GST for which the refund has been filed, has been paid twice. GST has been paid first time while filing the regular quarterly returns and GST paid second time while filing the Annual Return in form of GSTR-4. In such a case, the adjudicating authority required to verify whether the claimant had paid GST twice or not. If he is satisfied that the GST has been paid twice, the question of verification of any other document does not arise at all. Based on the details on GST portal the adjudicating authority could have sanctioned the refund claim by verifying the information and details on GST portal, the legitimate refund claim cannot be rejected on the ground that the appellant has not furnished Negative Liability Statement.
- It is well settled legal position that when any assessee has paid nay amount of tax in excess as it was not required to be paid but paid, the government cannot retain such excess amount of Tax. In terms of the provisions of CGST Act and Rules made thereunder, GST is to be paid on supply of the goods. When the first time GST was paid Rs. 22,964/-, the same was towards supply of the goods, whereas, second time, the GST was paid, which was on account of Negative Tax Liability. The amount of tax which was paid second time was not against any supply of goods and therefore, the question to make payment second time did not arise. The adjudicating authority has not disputed that the GST has paid twice, but rejected the refund claim on technical grounds.
- The adjudicating authority has ignored the basic principle for applicability of GST that the GST is to be collected only on supply of the goods or services



particularly when he has not disputed the facts that the tax which was paid second time was not in relation to supply of goods.

- The appellant submitted that the contentions of the adjudicating authority are not only incorrect, but also not based on the legal provisions. There was no valid and reasonable ground to dispute the facts and to reject the refund claim. The impugned order is devoid of any proper reasoning and justification and therefore requires to be set aside.
- The appellant submitted that the impugned order is required to be set aside and requested to sanction the refund claim of Rs. 22,964/-.

**Personal Hearing:**

3. Personal hearings were fixed in the matter on 09.05.2023, 19.05.2023, 08.06.2023 and 27.06.2023 by the appellate authority, but no one appeared from the appellant's side for personal hearing in the matter. Hence, the present appeal is required to be decided on ex-parte on available records and submissions made by the appellant.

**Discussion and Findings:**

4. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue involved in the present matter is (i) whether the appeal filed within time limit; and (ii) the appellant had applied for refund of tax paid twice on supply of goods as well as at the time of filing GSTR-4 annual return for the FY 2021-22 (i.e April 2021 to March 2022). However, the appellant has failed to submit / upload Negative Liability Statement nor attended the personal hearing. Accordingly, the refund claim was rejected by the Adjudicating Authority vide impugned order dated 11.07.2022. Against the said impugned order the appellant has preferred the present appeal on 10.01.2023.

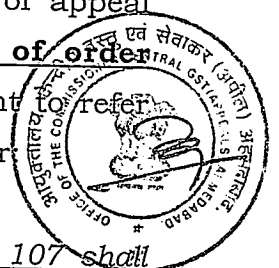
5. The appellant has informed in the present appeal proceedings that they have filed present appeal online on 19.10.2022 and after filing of appeal online on 19.10.2022 they have **submitted the certified copy of order appealed against only on 10.01.2023**. Accordingly, it is pertinent to refer Rule 108 of the CGST Rules, 2017. The same is reproduced as under

***Rule 108. Appeal to the Appellate Authority.-***

*(1) An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in **FORM GST APL-01**, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.*

*(2) The grounds of appeal and the form of verification as contained in **FORM GST APL-01** shall be signed in the manner specified in rule 26.*

*(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing of appeal under sub-rule (1) and a*



**final acknowledgement**, indicating appeal number shall be issued thereafter in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf:

**Provided** that where the certified copy of the decision or order is submitted within seven days from the date of filing the **FORM GST APL-01**, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

**Explanation.** -For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

Accordingly, I observed that in the instant case the appeal has been filed on 10.01.2023 i.e. appeal filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017.

**6 (i).** Therefore, 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.

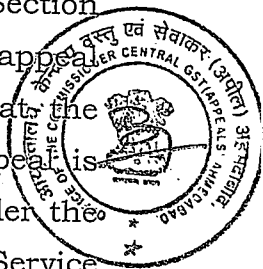
(2) .....

(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).** I observed that in the instant case that as against the *impugned order* of dated 11.07.2022, the appeal has been filed on 10.01.2023 i.e. appeal filed delay by three (3) months from the normal period prescribed under Section 107(1) of the CGST Act, 2017. I find that 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 11.07.2022 so, the normal appeal period of three months was available up to 11.10.2022 whereas, the present appeal is filed on 10.01.2023. Accordingly, in view of the above, I find that the present appeal is filed beyond the time limit as



prescribed under Section 107(1) of the CGST Act, 2017. Further, looking to the provisions of condonation of delay, I observed that even after condoning delay of filing of appeal for a further period of one month as per provisions of sub section (4) of Section 107 of the CGST Act, 2017 the last date for filing of appeal comes on 17.12.2022, whereas the present appeal is filed on 10.01.2023.

7. In view of the foregoing, I find that the present appeal is filed beyond the time limit prescribed under the provisions of Section 107 of the CGST Act, 2017. Accordingly, I find that the further proceedings in case of present appeal can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.

8. I find that this appellate authority is a creature of the statute and has to act as per the provisions contained in the CGST Act. This appellate authority, therefore, cannot condone delay beyond the period permissible under the CGST Act. When the legislature has intended the appellate authority to entertain the appeal by condoning further delay of only one month, this appellate authority cannot go beyond the power vested by the legislature. My views are supported by the following case laws:

(i) The Hon'ble Supreme Court in the case of **Singh Enterprises** reported as 2008 (221) E.L.T.163 (S.C.) has held as under:

"8. ...The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

(ii) In the case of **Makjai Laboratories Pvt Ltd** reported as 2011 (274) E.L.T. 48 (Bom.), the Hon'ble Bombay High Court held that the Commissioner (Appeals) cannot condone delay beyond further period of 30 days from initial period of 60 days and that provisions of Limitation Act, 1963 is not applicable in such cases as Commissioner (Appeals) is not a Court.

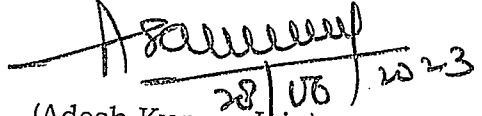
(iii) The Hon'ble High Court of Delhi in the case of **Delta Impex** reported as 2004 (173) E.L.T. 449 (Del) held that the Appellate authority has no jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days.



9. I find that the provisions of Section 107 of the Central Goods and Services Tax Act, 2017 are *pari materia* with the provisions of Section 85 of the Finance Act, 1994 and Section 35 of the Central Excise Act, 1944 and hence, the above judgments would be squarely applicable to the present appeal also.

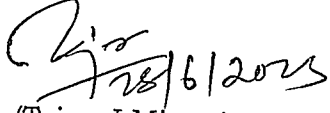
10. By respectfully following the above judgments, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under proviso to Section 107(4) of the Act. Thus, the appeal filed by the *appellant* is required to be dismissed on the grounds of limitation as not filed within the prescribed time limit in terms of the provisions of Section 107 of the CGST Act, 2017. I, accordingly, dismiss the present appeal.

11. 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.

  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)

Date: .06.2023

Attested

  
(Tejas J Mistry)  
Superintendent,  
CGST, Appeals, Ahmedabad



By R.P.A.D.

To,  
Jignesh Ramgopal Agrawal,  
[Trade Name : M/s. Chandramani Sales Agency]  
134, Camp Sadar Bazar, Cantonment,  
Ahmedabad : 380 004.

Copy to:

1. The Principal Chief Commissioner of Central Tax, CGST, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad North Commissionerate.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North Commissionerate.
4. The Assistant Commissioner, CGST & C. Ex, Division-I Naroda, Ahmedabad North Commissionerate.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication on website.
7. ~~Guard File / P.A. File~~

