



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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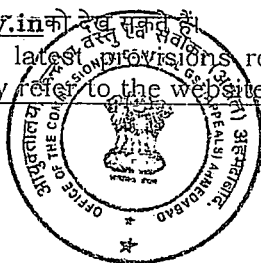


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DIN NO.: 20231064SW000000A147

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2435/2023 / 6726-32
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-59/2023-24 and 27.09.2023
(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	03.10.2023
(ङ)	Arising out of Order-In-Original No. ZK2403230058228 dated 03.03.2023 passed by The Deputy Commissioner, CGST, Division-III, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Maxxis Rubber India Pvt.Ltd. (GSTIN: 24AAJCM7177Q1ZM), Plot No. SM-12 + SM-51/2, Sanand-II Industrial Estate, Sanand, Ahmedabad, Gujarat-382110

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी /प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .

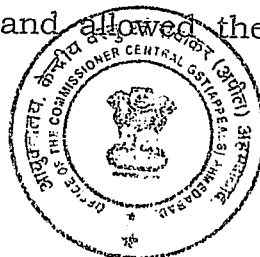


ORDER-IN-APPEAL**BRIEF FACTS OF THE CASE:**

M/s. Maxxis Rubber India Pvt. Ltd., (GSTIN :24AAJCM7177Q1ZM) Plot No. SM-12 SM-51/2, Sanand-II Industrial Estate, Sanand, Ahmedabad, Gujarat, 382110 [hereinafter referred to as "the appellant"] have filed an appeal dated 01-06-2023-online, against Refund order No.ZK2403230058228 dated 03-03-2023 [hereinafter referred to as "impugned order"] passed by the Dy. Commissioner, CGST & C.Ex., Division-III, Ahmedabad-NORTH [hereinafter referred to the "adjudicating authority"]

2. Facts of the case in brief, are that the appellant is registered vide GSTIN 24AAJCM7177Q1ZM and are engaged in manufacturing Tyre Products and numerous inputs are used in manufacturing products which includes imported goods as well. Further there were certain instances where the import of goods was undertaken on CIF basis via ocean route. The director General of Goods and Services Tax Intelligence, Zonal Unit Ahmedabad had issued a summons on September 14, 2018, to the Appellant seeking to present details or import of goods during the period April 23, 2017 to August, 2018. On further inquiries and personal hearings they were directed to pay IGST on the ocean freight associated with the import of goods on CIF basis for the period July 2017 to August 2018. In response to such instructions, they paid the 1GST liability and submitted their response vide letter dated December 04, 2018. Further, November 2018 onwards, the appellant has paid IGST liability on ocean freight vide GSTR-3B return on monthly basis. Subsequently the appellant has submitted application for the refund of GST paid on ocean freight under category of "ANY OTHER" amounting to Rs.1,53,85,273/- with the Deputy Commissioner, GST Central Excise, Division III, Ahmedabad North online vide ARN dated 22.09.2020.

3. The Deputy Commissioner, CGST Division-III Ahmedabad North vide OIO No.ZW2411200250490 dated 20.11.2020 rejected the refund of Rs.1,53,85,273/- of the appellant. Aggrieved by the said OIO, Appellant filed an appeal before the Commissioner (Appeals) against the said OIO dated 20.11.2020. The Additional Commissioner (Appeals), Ahmedabad vide Order-In-Appeal No. AHM-CGST-002-APP-ADC-66/22-23 dated 26-09-2022 directed the appellant to reverse the ITC so availed and produce the proof of the same before the refund sanctioning authority and allowed the appeal subject to reversal of credit so availed by them.



4. Accordingly, the appellant, filed refund claim vide ARN No AA240123002758L on dated 02-01-2023 for Rs.1,53,85,273/-. The adjudicating authority found that the appellant had complied with the directions in the OIA dated 26-09-2022 by reversing the ITC of Rs.1,53,85,273/- vide DRC-03 dated 22-11-2022 and submitted the refund claim by following the principle of judicial discipline. The adjudicating authority vide the impugned order dated 03-03-2023 sanctioned the refund of Rs.1,53,85,273/- of the appellant.

5. The appellant has filed present appeal against the impugned order on the following grounds:

“A. Non-payment of interest on delayed payment of refund

1. The appellant would like to draw the kind attention of your Honour that the Respondent has granted refund of IGST amount of Rs.1,53,85,273/- for which the refund application had been filed by Appellant on October 08, 2020. Refund against aforesaid application was sanctioned on March 03, 2023, i.e almost after delay of 2.5 years, however, it has been observed that no interest or the delayed refund has been granted.

2. In this regard, the Appellant wish draw your kind attention to Section 56 of the interest on delayed payment of refunds which reads as under:

Section 56. Interest on delayed refunds- If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under subsection (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation. - For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).

3. From the plain reading of the above provision, it clear that due refund must be disbursed within sixty days from the date of application. If not so paid, the applicant will be entitled for the interest amount at the rate fixed by Central Government in their official gazette.

4. The Appellant would also like submit that Honourable Gujarat High Court dealt with the similar facts. Vide the below referred judgements, Honourable Court has pronounced that IGST paid on ocean freight shall be refunded along with applicable interest:

M/s ADI Enterprises (Misc. Civil Application 01 of 2020 in Special Civil Application 10479 of 2019)

"The respondents are hereby directed to grant refund of the amount of IGST already paid by the applicants pursuant to the Entry No. 1 O of Notification No. 10/2017-IGST (Rate) dated 28.6.2017 along with statutory rate of interest on such refund within a period of four weeks from the date of submission of necessary documents by the applicants. Rule is made absolute."

M/s Louis Dreyfus Company India Private Limited (Civil Application 11540 of 2021),

"6. I view of the decision in Mohit Minerals Pvt. Ltd. (supra), since the impugned Notifications have already been declared as ultra vires, present petition deserves to be allowed.

7. Accordingly, the petition is allowed in terms of para Nos. 13(A) and 13(B). It is directed that if any IGST amount is collected, the same shall be refunded within six weeks along with statutory rate of interest."

From the above referred matters, it is clear that passing a refund order without granting interest on delayed payment of interest is completely bad in law. The Appellant is clearly eligible for the interest at statutory rate.

6. The Appellant also wish to place reliance on the judgement of Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. v UOI [2011 (273) E.L.T. 3 (S.C.)] wherein it was held that -

"9. It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application."

7. Further, in the case of HINDUSTAN COCA-COLA BEVERAGES PVT. LTD. Versus UNION OF INDIA [2015 (324) E.L.T. 299 (Guj.)], Gujarat High Court has held that "Even in absence of any statutory provision, interest on refund is automatic and has to be granted on commercial principles"

8. The Appellant also wish to mention that in the pre- GST regime as well, it was specifically clarified by the Government that the interest on delayed payment of refund shall be automatic and relevant officers should grant the refund without waiting for instructions. Relevant Circular # 670/61/2002-CX, dated October 01,

2002 is issued by Board in this regard. The relevant para is reproduced herewith for easy reference:

"I am directed to invite your attention to provisions of section 11BB of Central Excise Act, 1944 that wherever the refund/rebate claim is sanctioned beyond the prescribed period of three months of filing of the claim, the interest there on shall be paid to the applicant at the notified rate. Board has been receiving a large number of representations from claimants to say that interest due to them on sanction of refund/rebate claims beyond a period of three months has not been granted by Central Excise formations. On perusal of the reports received from field formations on such representations, it has been observed that in majority of the cases, no reason is cited. Wherever reasons are given, these are found to be very vague and unconvincing. In one case of consequential refund, the jurisdictional Central Excise officers had taken the view that since the Tribunal had in its order not directed for payment of interest, no interest needs to be paid. In this connection, Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest. Simultaneously, Board would like to draw attention to Circular No. 398/31/98-CX, dated 2-6-98 [1998 (100) E.L. T. T16] wherein Board has directed that responsibility should be fixed for not disposing of the refund/rebate claims within three months from the date of receipt of application. Accordingly, jurisdictional Commissioners may devise a suitable monitoring mechanism to ensure timely disposal of refund/rebate claims. Whereas all necessary action should be taken to ensure that no interest liability is attracted, should the liability arise, the legal provision for the payment of interest should be scrupulously followed."

The Appellant also wishes to place reliance on the judgement of Ahmedabad CESTAT wherein it has been held that interest is statutory right.

COMMISSIONER OF CENTRAL AND SERVICE TAX, RAJKOT Vs. M/s RELIANCE INDUSTRIES LTD 2014-TIOL-2152-CESTAT-AHM

"6. Both the lower authorities come to the conclusion that the provisions under section 11B and 11BB of the Central Excise Act 1944 are not attracted in the case for granting of interest to the appellant as the refund claims filed are under Notification No. 15/2009-ST and the said Notification does not provide for granting of interest in the belated interest claims. In our considered view; lower authorities order are incorrect as the inconsonance of the latter for more than one reasons.

- Firstly, it is to be noted that any services rendered in an SEZ units are exempted by SEZ Act 2005 and the appeals which made service tax in excess what was in other ways liveable is to be refunded as per the provisions. In the case in hand, undisputedly services were rendered to the appellant in an SEZ unit and service tax paid by the service provider. This basic fact has been overlooked by the lower authorities. In our considered view the Notifications No. 9/2009-ST and 15/2009-ST are only putting into operations the exemptions/immunity available to an SEZ unit. This is the ratio which has been decided by us in the case of Reliance Ports and Terminals Ltd - 2013-TIOL-1473-

CESTAT-AHM. If this ratio is not applicable, appellant herein need not have paid any service tax to the service provider.

- Secondly, we find that the First Appellate Authority has held that the appellants claim is contrary to the spirit of the Board circulars is findings contrary to the spirit of both the circulars dtd 20th May, 2009 wherein the Board has categorically directed the formulation that the refund claim of the service tax paid on services rendered to SEZ units should be sanctioned within the maximum time of 30 days from the date of filing of refund claim and many case beyond 45 days from the date of filing of the refund claim. Clear instructions of the board are not followed in the case in hand which is very evident from the delay which has occurred in sanctioning refund claim as indicted in Para 2 herein above. In our considered view, the time limit which has been given out in place by the Board needs to have been followed failing which, in our considered view the liability to pay interest arises. We also find that the circular dtd 20th May, 2009 has practically put the refund claims filed in terms of Notification of 9/ 2009 on a higher platform as compared to other types of refund claims filed under Section 11 B for which 3 months period was prescribed for processing the claim from the date of filing of the refund claims. In our considered view, expeditious sanction of refund claims was considered in true spirit of both the circular May 2009 which has been completely ignored by the lower authorities. To our mind it was not necessary to provide interest in the belated sanction of refund claim as interest is statutorily payable in terms of the provisions of Section 11BB of Central Excise Act 1944."

10. In the light of various judicial precedents, the Appellant humbly request good self to kindly sanction interest".

PERSONAL HEARING:



Personal hearing in the matter was held on 11.09.2023, Ms. Divya Soni, Chartered Accountant, appeared on behalf of the Appellant in the present appeal. During the Personal Hearing she submitted that refund claim has been sanctioned after approx. 2½ years, but interest has not been granted, therefore interest is payable to them as per the provisions of Section 56 of the CGST Act. She further reiterated the written submissions and requested to allow the appeal.

DISCUSSIONS AND FINDINGS:

7. I have gone through the facts of the case, available documents on record and written submissions made by the Appellant. I find that the main issue to be decided in the instant case is:

(i) whether the interest is payable on refund sanctioned vide the impugned order passed by the adjudicating authority?

7.1 At the foremost, I observed that in the instant case the "impugned order" is of dated 03-03-2023 and the present appeal is filed online on 01-06-2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. Therefore, I find that the present appeal is filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

7.2 I find that the present appeal is filed for claiming interest on the refund sanctioned vide the impugned order. Further I find that the Appellant after reversing the ITC of Rs.1,53,85,273/- vide DRC-03 dated 22-11-2022 as per the directions of the Appellate authority vide OIA dated 26-09-2022 has applied for Refund vide ARN No.AA240123002758L dated 02-01-2023 before the Jurisdictional Refund Sanctioning authority. The adjudicating authority vide the impugned order dated 03-03-2023 has sanctioned the said Refund applied by the Appellant in 60 days of application for Refund filed by the Appellant as per the order of the Appellate authority.

7.3 I find that Section 56 of the CGST Act provides for provisions of interest to be paid on delayed sanction of refund. The same is reproduced here under:

*** Section 56. Interest on delayed refunds.-**

If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

7.4 From the above provisions, I find that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court as the case may be which has attained finality and the same if not refunded within sixty days from the date of receipt of application filed consequent to such order, then interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council is required to be paid, in respect of such refunds.

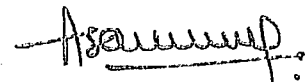
7.5 In the instant case, I find that order of the appellate authority i.e. Additional Commissioner-Appeals, CGST Ahmedabad is of date 26-09-2022, the Appellant applied for refund as per the said order on 02-01-2023 and the Adjudicating authority i.e. refund sanctioning authority has sanctioned the said refund of Rs.1,53,85,273/- on 03-03-2023, which is well within the time limit of 60 days as the provisions ibid. As there appears to be no delay in

sanctioning of the refund claim filed by the Appellant, therefore the question of payment of interest does not arise. Therefore, I am of the view that the appeal filed by the appellant does not merit in the instant case.

8. In view of the foregoing facts & discussion, I do not find any infirmity in the impugned order and the impugned order passed by the adjudicating authority is legal and proper and as per the provisions of law to the above extent. Accordingly, I reject the present appeal of the "Appellant".

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

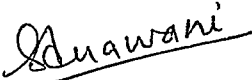
9. The appeal filed by the Appellant stands disposed of in above terms.



(ADESH KUMAR JAIN)
JOINT COMMISSIONER(APPEALS)
CGST & C.EX., AHMEDABAD.

Date: 27/09/2023.

Attested.



(Sunita D.Nawani)
Superintendent,
CGST & C.Ex.,
(Appeals), Ahmedabad



By R.P.A.D.

To:

M/s. Maxxis Rubber India Pvt. Ltd., Plot No. SM-12 SM-51/2, Sanand-II
Industrial Estate, Sanand, Ahmedabad, Gujarat, 382110.
(GSTIN :24AAJCM7177Q1ZM) .

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
 2. The Commissioner, CGST & C.Ex., Appeals, Ahmedabad
 3. The Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
 4. The Addl./Joint Commissioner (Systems)CGST & C.Ex, Ahmedabad-North Commissionerate.
 5. The Dy./Assistant Commissioner, CGST & C.Ex. Division-III Ahmedabad-North Commissionerate.
 6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
- ~~7. Guard File/ P.A. File.~~

