



सत्यमेव जयते

आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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DIN NO. : 20220364SW000000E7BF

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/COM/GSTP/147/2021-Appeal / 111 - 15

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-COMMR-APP-85/2021-22**
दिनांक Date : **28-03-2022** जारी करने की तारीख Date of Issue : 29-03-2022

आयुक्त (अपील) द्वारा पारित

Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No **48/JC/MT/GST/2020-21** dated **24.02.2021** issued by Joint Commissioner, Central Goods and Service Tax, Ahmedabad North

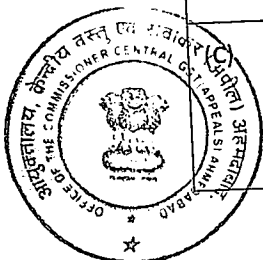
घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Suraj Limited

Suraj House, Opp. Usmanpura Garden,

Ashram Road, Ahmedabad - 380009

(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.
	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

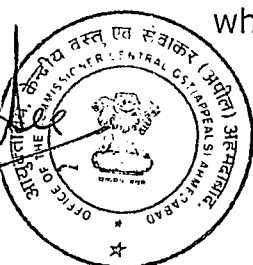
1. This order arises out of an appeal filed by M/s. Suraj Limited, Suraj House, opposite Usmanpura Garden, Ashram Road, Ahmedabad-380009 (hereinafter referred to as 'appellant') against Order in Original No. 48/JC/MT/GST/2020-21 dated 24.02.2021 (hereinafter referred to as 'the impugned order') passed by the Joint Commissioner, CGST & Central Excise, Commissionerate: Ahmedabad-North (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant, holding GSTIN NO. 24AAGCS6939M1ZR, had filed the following refund claims under Section 54 of the CGST Act, 2017, on account of input tax credit (ITC) accumulated due to Zero rated supply of goods and service and the same were sanctioned to them, by the Deputy Commissioner, Division-VII, CGST, Ahmedabad-North vide issuance of Refund Order in RFD-06 format as mentioned herebelow:

Refund Period	ARN No.	Refund Order (in RFD-06 format)	Amount of Refund Sanctioned (Rs.)			
			IGST	CGST	SGST	Total
1	2	3	4			
July 2017	AB2407179 75506N	Div-VII/GST- Refund/54/Final/Suraj /2018 dated 11.04.2018	5776746	1414425	1414425	8605596
Aug 2017	AA2408170 82383X	Div-VII/GST- Refund/35/Final/Suraj /2018 dated 04.04.2018	4714591	949439	949439	6613469

2.1 Thereafter, the department had filed appeals against the said Refund Orders (as mentioned in the column-3 of the table at Para-2 above) (hereinafter referred as the 'original adjudication/refund orders') with the Commissioner (Appeals), Central GST, Ahmedabad. The departmental appeals were mainly filed on the grounds, briefly produced below:

- As per sub-section (3) of the Section 54 of the CGST Act, 2017, "a registered person may claim refund of any unutilized input tax credit at the end of any tax period".
- In the months for which refund claims were filed, there was no balance of input tax credit lying unutilized.
- The adjudicating authority has erroneously sanctioned refund of Rs. 86,05,596/- for July, 2017 and Rs. 66,13,469/- for August, 2017 which needs to be recovered along with interest.

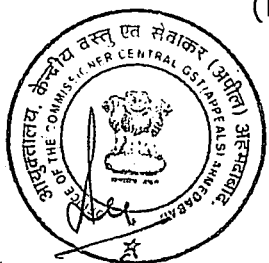


2.2 The appeals filed by the department were allowed by the Commissioner (Appeals), Central GST, Ahmedabad (hereinafter referred as 'earlier appellate authority') vide Order-in-Appeals No. AHM-EXCUS-002-APP-197-198-18-19 dated 23.03.2019 (issued on 15.05.2019) (hereinafter referred as 'original appellate order') wherein he has set aside the original adjudication/refund orders and allowed the prayer of the department for the recovery of the erroneous refund along with interest.

2.3 Accordingly, a Show Cause Notice was issued dated 22.10.2020 to the appellant for recovery of erroneously refunded amount totaling Rs. 1,52,19,065/- [Refund of Rs. 86,05,596/- granted for the month of July, 2017 vide RFD-06 Order No. Div.VII/GST-Refund/54/Final/Suraj/2018 dated 11.04.2018 and Refund of Rs. 66,13,469/- granted for the month of August, 2017 vide RFD-06 Order No. Div.VII/GST-Refund/35/Final/Suraj/2018 dated 04.04.2018] from them under Section 73(1) of the CGST Act, 2017 alongwith applicable interest. The SCN dated 22.10.2020 has been adjudicated by the adjudicating authority vide the impugned order wherein he has confirmed the recovery of erroneously refunded amount of Rs. 1,52,19,065/- as per Section 73 of CGST Act, 2017 alongwith applicable interest and also imposed penalty amounting to Rs. 15,21,907/- under Section 73(9) of the CGST Act, 2017.

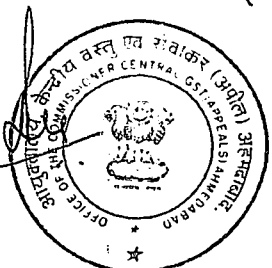
3. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds, which are as reproduced herebelow:

- (i) They are engaged in manufacture of seamless stainless steel pipes and tubes and substantial portion of the goods manufactured by them is exported on payment of IGST or Letter of Undertaking as the case may be and they are registered with the GST department for the said purpose.
- (ii) The demand raised for recovery of refund sanctioned to them against unutilized Input Tax Credit due to zero rated supplies during the month of July, 2017 and August, 2017 is ex-facie illogical and bad in law and has been filed by ignoring the provisions of refund governed under the CGST Act, 2017 and Rules made thereunder.
- (iii) The proposal to recover the refund claim is also improper as the allegation of sanctioning the refund due to insufficient balance in



electronic credit ledger is also baseless as the portal itself reflects the input tax credit balances when a claimant files a refund claim and the claimant has no role to play while claiming the refund through RFD 01A mechanism.

- (iv) The adjudicating authority has not discussed the provisions of Section 54(3) of the CGST Act, 2017 and have arbitrarily for the sake of rejection of refund claim, ignored the provisions of Section 54(3) of the Act and as such the impugned order demanding recovery of refund claim of the appellant for the period of July, 2017 and August, 2017 is required to be set aside.
- (v) As per the GST law which had become effective from 01.07.2017, Government had allowed transitional credit of Central Excise duties, Service Tax and State Taxes and the balances thereof as on 30.06.2017 were required to be reflected as CGST or SGST credit w.e.f. 01.07.2017 in electronic credit ledger on filing of Trans-1. Since the feature of filing Trans-1 was not very clear on implementation of GST, the appellant had filed Trans-1 on 06.09.2017 and accordingly, a balance of input tax credit of CGST amounting to Rs. 1,94,11,625/- and SGST amounting to Rs. 50,52,689/- totaling to Rs. 2,44,64,314/- was available with the appellant in the electronic credit ledger as on 06.09.2017. Accordingly, the fact remains that the said credit was available with the appellant as on 01.07.2017 itself but had been transmitted on GST portal at a later date i.e. on filing of Trans-1.
- (vi) The process of filing refund of unutilized input tax credit works on dual mechanism, wherein at the first stage, the applicant seeking GST refund has to make an application for refund of unutilized credit online on the GST portal through RFD-01, by the means of which RFD-01A is generated on GST portal. While making an application, the claimant has to submit the details of Turnover of zero-rated supply of goods, adjusted Total Turnover and Net ITC and on the basis of the same, the portal on its own auto calculate the refund and the same is auto populated on the RFD-01A.
- (vii) The adjudicating authority has not given any findings against the proposal for confirming the refund sanctioned to the appellant and has concluded at Para 14 of the impugned order that he has confirmed the demand only because the order of Commissioner (Appeals) was in favour of the revenue and that the present order is



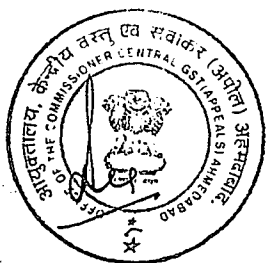
being passed out due to time limit given in Section 73 of the CGST Act, 2017 and he is being statutorily compelled to adjudicate the SCN due to time limit given in Section 73 of the CGST Act, 2017. Accordingly, the impugned order was passed without considering the submissions made by the appellant and facts on records.

- (viii) The adjudicating authority has grossly violated the provisions of Section 73(9) of the Act *ibid* in as much as he has not considered any of the submissions made by the appellant. Secondly, as per the provisions of Section 73(9) of the CGST Act, 2017, the interest and penalty is imposed only when the tax is determined. The present issue is related to denial of refund on various illogical grounds and not related to determination of tax not paid by the appellant. Accordingly, the adjudicating authority has grossly erred in confirming the recovery of interest and imposition of penalty under the provisions of Section 73(9) of the Act *ibid*.

4. The appellant was granted opportunity for personal hearing on 12.11.2021 through video conferencing. Shri Anil Gidwani, Advocate, appeared for hearing as authorised representative of the appellant. He reiterated the submissions made in Appeal Memorandum. He further requested that the case may be kept in abeyance, as the principal refund order was decided against them by Commissioner (Appeals). As no Tribunal has been formed, they were not in a position to file appeal against the said order of Commissioner (Appeals), as the matter pertained to GST.

5. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of hearing. The issues to be decided in the present appeal are as under:

- (i) Whether the demand confirmed by the adjudicating authority vide impugned order for recovery of erroneously sanctioned refund amount of Rs. 1,52,19,065/- from the appellant under Section 73 of the CGST Act, 2017 alongwith applicable interest, is legally correct or otherwise?
- (ii) Whether the Penalty of Rs. 15,21,907/- imposed on the appellant under the provisions of Section 73(9) of the CGST Act, 2017, is legally correct or otherwise?



6. In the present case, I find that the 'earlier appellate authority' during the appeal proceedings in respect of the appeal filed by the department against the 'original adjudication/refund orders', have examined the relevant provisions of Section 54 of the CGST Act, 2017 and Rule 89 of the CGST Rules, 2017. Further, as per the facts recorded at Para-8 of the 'original appellate order', it was observed that the appellant had availed Credit of total Rs. 2,00,05,176/- in the month of July, 2017 (as per GSTR 3B) whereas they had utilized the Credit of total Rs. 2,55,15,458/- during the month of July, 2017 (as per GSTR 3B). Similarly, the appellant had availed Credit of total Rs. 1,72,47,940/- in the month of August, 2017 (as per GSTR 3B) whereas they had utilized the Credit of total Rs. 1,94,27,324/- (as per GSTR 3B) during the month of August, 2017. The said facts have not been disputed by the appellant at any point of time. After examining the abovementioned relevant provisions and the facts available on records, the 'earlier appellate authority' has mentioned his findings in the 'original appellate order', as reproduced below:

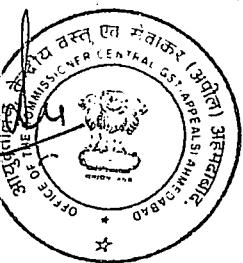
"9. The primary ground raised by the department is that when the mandate of Section 54(3) of the CGST Act, 2017, clearly states that a registered person may claim refund of any unutilized input tax credit at the end of any tax period, the question of granting refund, especially when there was no balance of unutilized ITC credit, is not tenable and therefore legally not correct and hence, erroneous. I have no hesitation in stating that the refund in such cases can be sanctioned purely by the mandate of Section 54(3) of the CGST Act, 2017. The respondents submission-that they had only filled up the columns pertaining to details of turnover and net input tax credit in respect of Statement 3A of the GST RFD 01A and the rest of the amounts were auto populated by the system and therefore he cannot be blamed, is again not a tenable. What is not legally permitted as refund cannot be given via any other means, even if it be an error on the GST portal as far as computing refund is concerned. Notwithstanding any grounds raised, I am of the firm belief, that once there was no unutilized ITC credit lying in the balance in respect of the refunds erroneously granted, it was incumbent on the respondent not to have claimed it in the first place.

10.....

11. However, I find that..... Thus the ground raised in the departmental appeal, stands vindicated meaning if the balance in the electronic credit ledger of the claimant is zero as is the present case of the respondent, the question of granting refund of unutilized credit does not arise, because there was no unutilized credit in the first place.

12.

13. The departmental appeals are allowed and the impugned OIO is set aside to the extent it has sanctioned refund as mentioned in Table B above.



The prayer of the department for the recovery of the erroneous refund along with interest is also allowed."

6.1 In the present case, I find that there is neither any substantial change in the facts of the case since the issuance of the 'original appellate order' by the 'earlier appellate authority' nor the appellant has produced any additional grounds in support of their contention. Further, in absence of any specific directions or stay granted by any higher appellate authority or a court of law, I find that the issue "whether the refund granted to the appellant vide 'original adjudication/refund orders', as mentioned in the table at Para-2 above was legally correct or otherwise?" has attained finality. It is held that the appellant had been erroneously sanctioned the said refund amount of Rs. 86,05,596/- for the month of July, 2017 and Rs. 66,13,469/- for the month of August, 2017 amounting to Rs. 1,52,19,065/-, **for which any question of review or reconsideration thereof does not arise at this stage. As such, in absence of any additional grounds or substantial change in the facts of the case, any reconsideration or review in respect of the said issue, is also not within the scope of the present appeal proceedings.**

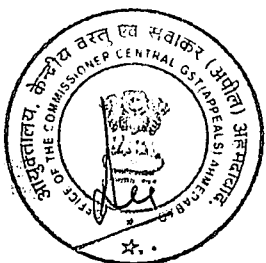
6.2 Further, I find that the provisions of Section 73(1), Section 73(8) and Section 73(9) of the CGST Act, 2017 are, as reproduced below:

"Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-

(1) Where it appears to the proper officer that **any tax has not been paid or short paid or erroneously refunded**, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any willful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order."



6.3 In the present case, as per the facts available on record, it is observed that the Show Cause Notice F.No. GST/15-18/OA/2020 dated 22.10.2020 was also issued to the appellant, for recovery of the amount erroneously refunded alongwith interest, in terms of the provisions of Section 73 (1) of the CGST Act, 2017 which have been subsequently adjudicated vide the impugned order by the adjudicating authority. Further, on going through the provisions of Section 73 (1) and also Section 73 (9) of the Act, I find that it is very clear that when the refund sanctioned to the appellant amounting to total Rs. 1,52,19,065/- is proved as 'erroneously refunded', the said amount is liable to be recovered from the appellant alongwith interest payable thereon under Section 50 of the Act and also a penalty leviable under the provisions of this Act or the rules made thereunder.

6.4 Further, it is also observed that the appellant has contended that "*as per the provisions of Section 73(9) of the CGST Act, 2017, the interest and penalty is imposed only when the tax is determined. The present issue is related to denial of refund and not related to determination of tax not paid by the appellant. Accordingly, the adjudicating authority has grossly erred in confirming the recovery of interest and imposition of penalty under the provisions of Section 73(9) of the Act ibid*". As regards the said contention, on going through the said provisions of Section 73(1), Section 73(8) and Section 73(9) of the CGST Act, 2017, I find that the provision of Section 73 (9) of the Act are to be read in continuation of the provisions of Section 73(1) and Section 73(8) of the Act. Further, I find that it is clear that when the appellant has not paid the amount which has been declared as erroneously refunded to them, along with interest payable under section 50 within thirty days of issue of show cause notice as per the provisions of Section 73(8) of the Act, a penalty equivalent to ten per cent of the said amount or ten thousand rupees, whichever is higher is imposable on the appellant as per the said provisions of Section 73(1) readwith Section 73(9) of the CGST Act, 2017. Accordingly, the contention of the appellant in respect of the interest and penalty, as discussed above is not legally sustainable. Hence, I find that the impugned order passed by the adjudicating authority is as per the settled position of law and legally correct.

6.5 It is also observed that the appellant has during the personal hearing stated that "*the case may be kept in abeyance, as the principal refund order*



was decided against them by Commissioner (Appeals). As no Tribunal has been formed, they were not in a position to file appeal against the said order of Commissioner (A), as the matter pertained to GST". As regard the said contention of the appellant, I find that in the present case, the impugned order has been issued against the appellant for recovery of the tax/amount erroneously refunded to them, alongwith interest and penalty leviable thereon under the provisions of Section 73 of the CGST Act, 2017, which are as reproduced below:

Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-

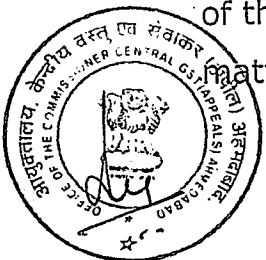
(1) **Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any willful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.**

(2) **The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.**

(9) **The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.**

(10) **The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.**

As per the provision of Section 73(10) of the Act, it is observed that the order in terms of Section 73(9) of the Act is required to be issued **within three years from the date of erroneous refund**. Accordingly, the adjudicating authority is bound to issue the order within the prescribed time limit as above. In absence of any stay or specific directions issued by any higher appellate forum, the adjudicating authority or the appellate authority, being creature of the provisions of the Act, can not go beyond the provisions of the Act. Accordingly, I find that the contention of the appellant to keep the matter in abeyance is not legally sustainable.



7. On careful consideration of the facts of the case, the relevant legal provisions and submission made by the appellant, I passed the Order as below:

- (i) 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. Hence, I uphold the impugned order passed by the adjudicating authority and reject the appeal filed by the appellant.

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

Akhilesh Kumar
.. 28th March, 2022 ..

(Akhilesh Kumar)
Commissioner (Appeals)

Date: 28/MARCH/2022

Attested

M. P. Sisodiya

(M. P. Sisodiya)
Superintendent (Appeals)
Central Excise, Ahmedabad



By Regd. Post A/D

To,

M/s. Suraj Limited,
Suraj House,
Usmanpura garden,
Ashram Road, Ahmedabad-380009

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Commissionerate: Ahmedabad-North.
3. The Deputy /Asstt. Commissioner, Central GST, Division-VII, Commissionerate: Ahmedabad-North.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Commissionerate: Ahmedabad-North.
5. Guard file
6. PA File