



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद



Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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टेलीफैक्स 07926305136

रजिस्टर्ड डाक ए.डी. द्वारा

DIN: 20201264W000099BF9

क फाइल संख्या : File No :V2(GST)/8/AHD-SOUTH/2020-21
V2(GST)/7/AHD-SOUTH/2020-21
V2(GST)/6/AHD-SOUTH/2020-21
V2(GST)/5/AHD-SOUTH/2020-21

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-029 to 032/20-21
दिनांक Date : 27-11-2020 जारी करने की तारीख Date of Issue : 14.12.2020

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

ग Arising out of Order-in-Original No ZO2404200148404, ZR2404200148293, ZS2404200148360
and ZO2404200148404 दिनांक: 08.04.2020 issued by Deputy Commissioner, Central GST, Division-
VI, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Ambica Metal Corporation, Shed No.1, First Floor, Bhagyoday Estate, Chakudiya
Mahadev Road, Rakhial, Ahmedabad.

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> 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 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

These orders arise on account of four (4) appeals filed by Shri Narendra Chhatararam Malviya, Proprietor of M/s Ambica Metal Corporation, Shed No.1, First Floor, Bhagyoday Estate, Chakudiya Mahadev Road, Rakhial, Ahmedabad (in short '*appellant*') against the following Orders-in-Original (in short '*impugned orders*') passed by the Deputy Commissioner, CGST, Division-VI, Ahmedabad South (in short '*adjudicating authority*') in respect of four refund claims filed by the appellant under the provisions of Section 54 of the CGST Act, 2017 read with Section 16 of the Integrated Goods and Service Tax Act, 2017 and Rule 89(1) of the Central Goods & Services Tax Rules, 2017:

Sr. No.	OIO No. & Date	Period for which refund claimed	Amount of refund claimed (Rs.)	Appeal No.
1	ZO2404200148404 dated 08.04.2020	June, 2019	14118/-	V2(GST) 8/ Ahd- South/ 2020-21
2	ZR2404200148293 dated 08.04.2020	July, 2019	28605/-	V2(GST) 7/ Ahd- South/ 2020-21
3	ZS2404200148360 dated 08.04.2020	August-September, 2019	1477/-	V2(GST) 6/ Ahd- South/ 2020-21
4	ZO2404200148404 dated 08.04.2020	October-November, 2019	16632/-	V2(GST)5/5Ahd- South/ 2019-20

2. Brief facts of the case are that the appellant having GSTIN 24AUDPM2340J1ZV had filed four refund claims for the period as mentioned in the above table in respect of the IGST paid by them on goods supplied to SEZ unit. The said refund claims filed by the appellant were rejected by the adjudicating authority vide the above referred impugned orders on the ground that as per para 8 of Circular No.125/44/2019-GST dated 18.11.2019, persons opting to file GSTR-1 on quarterly basis, can only apply refund on a quarterly basis or clubbing successive quarters and that the appellant have not followed the said procedure and had preferred claim for random months.

3. Being aggrieved with the rejections of their refund claims, the appellant has preferred the present appeals contending that their refund application filed for the random months of April and May, 2019 was successfully approved and refund had already been received by them; that why their such random months refund application was not rejected at that time; that they were not aware about the procedure of filing refund application on quarterly basis; that they filed the refund applications for random months as their random months application was approved earlier successfully and that their application must not be rejected because they have a genuine claim of refund on account of export to SEZ unit with payment of tax.

4. A personal hearing in the matter was held on 22.10.2020 through virtual mode. Shri Gaurav Devidasbhai Lavale, CA appeared for the hearing on behalf of the appellant. He



reiterated the submissions of appeal memo and further submitted a written submission for consideration. The appellant, in their written submissions, *inter alia*, contended that the Circular No.125/44/2019-GST dated 18.11.2019 prescribes the procedure of filing refund application but Section 54 of the CGST Act clearly authorize them to claim refund of GST against supplies made to SEZ units with payment of GST; that the Circular cannot override the Act or law; that so the refund application cannot be rejected on the ground that the appellant have not filed quarterly refund application; that they have tried to file refund application for consecutive months for the period from June 2019 to December 2019 but the GST portal was throwing wrong errors due to which they could not file such refund application and when they tried to file the refund application on random months basis, the same was successfully filed and that when the procedure for filing refund application, monthly or quarterly, has been decided by the Circular, then GST Portal must be updated in such a manner that a person cannot file refund application without following such procedures of monthly or quarterly filing and GST portal must now allow to file GST refund application on random months basis so that such types of mistakes cannot happen.

5. I have carefully gone through the facts of the case, appeal memorandum, submissions made at the time of personal hearing and evidences available on records. It is observed that the applications for refund under GST regime were envisaged under electronic refund module under common portal, but due to unavailability of fully functional electronic refund module, a temporary mechanism to deal with refund applications was put in place by the CBIC wherein various post submission stages of processing of the refund application continued to be manual. Later, with the electronic refund module becoming fully functional/operational, the CBIC has decided to process the refund applications under GST completely under electronic mode through the common portal. Accordingly, they issued a Circular No. No.125/44/2019-GST dated 18.11.2019 laying down in a comprehensive manner the procedures to be followed for filing of refund applications and processing of such refund applications in the electronic module. The said procedures for filing and processing of refund applications was made applicable with effect from 26.09.2019. Thus, the refund applications filed in form RFD-01 in the common portal have to be in terms of the latest procedures laid down by the CBIC vide Circular dated 18.11.2019.

5.1 In the present case, the appellant's applications for refund of IGST paid on supplies made by them to SEZ units were dated 26.02.2020. Therefore, it is obvious that the refund applications have to be in terms of the latest procedures laid down by the CBIC vide the Circular dated 18.11.2019 with effect from 26.09.2019. The said Circular, in para 8, laid down that:

"8. The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different financial years. Registered persons



having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file FORM GSTR-1 on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c) and (e) in para 3 above must be filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle/limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier."

It is clear from the above para of the Circular that registered persons having aggregate turnover of up to Rs.1.5 crore in the preceding financial year or the current financial year opting to file FORM GSTR-1 on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters. Thus, registered person opting to file Form GSTR-1 quarterly has no option but to file the refund applications on a quarterly basis. This is because of the system requirements and the admissible/eligible refund in the electronic module is calculated based on and after verifying the Form GSTR-1 and Form GSTR 3-B filed by the tax payers for the relevant tax period for which the refund is claimed. In the present case, the adjudicating authority has rejected the refund applications of the appellant on the ground that they were required to file the refund applications quarterly and they cannot file the same on random months basis, as per Circular dated 18.11.2019 discussed above. The appellant, in their appeal, nowhere disputes that their turnover was over Rs.1.5 Crore or that they have not opted to file Form GSTR-1 quarterly. When that being so, they do not have the option to file the refund applications on random months basis and they could file it only on a quarterly basis.

5.2 It is observed that the contentions raised by the appellant in their appeal does not survive on merits as the right to claim refund under Section 54 of the CSGT Act, 2017 is subject to following the procedures laid down for claiming the same in the manner prescribed. The contention that they were not aware about the procedure of filing refund application on quarterly basis does not help their cause as ignorance of law is not an excuse not to comply with procedures laid down. The appellant's contention that they were granted refund on random months earlier, does not ipso facto gives them right to claim it on random month basis for the period after issuance of the Circular dated 18.11.2019 by which the restriction to claim refund only on quarterly basis came into effect for those filing Form GSTR-1 quarterly. The refund claims sanctioned earlier might have been filed prior to 18.11.2019 and for that reason, the procedures laid down the Circular dated 18.11.2019 were not applicable in those cases and those claims might have been processed as per procedures laid down for the relevant period. The appellant, in their written submissions made during the hearing, has stated that they have tried to file refund applications for consecutive months for the period from June 2019 to



December 2019 but could not do as the GST portal was throwing wrong errors. Had that been the case, they very well could have taken up the matter with the jurisdictional GST authorities and made them aware of the difficulties they faced in filing refund claims quarterly, instead of filing the refund applications on random months basis especially when they were well within the limitation prescribed for claiming the subject refund.

6. In view thereof, I do not find any reason to interfere with the impugned order passed by the adjudicating authority and accordingly, the appeal filed by the appellant is rejected being devoid of merits.


7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed off in above terms.

मुकेश राठौर
27/11/2020

(मुकेश राठौर)
संयुक्त आयुक्त (अपील्स)

Date: 27.11..2020.

Attested:


(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.



BY SPEED POST TO:

Shri Narendra Chhatararam Malviya,
Proprietor of M/s Ambica Metal Corporation,
Shed No.1, First Floor,
Bhagyoday Estate, Chakudiya Mahadev Road,
Rakhial, Ahmedabad.

Copy to:-

1. The Chief Commissioner, Central Tax , Ahmedabad Zone..
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Deputy Commissioner, CGST Division-VI, Ahmedabad South.
4. The Asstt. Commissioner, CGST (HQ System), Ahmedabad South.
(for uploading OIA on website)
5. Guard file.
6. P.A. File

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