



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: 20210264SW000000E3C8

क फाइल संख्या : File No : V2(GST)27/AHD, V2(GST)28/AHD, V2(GST)29/AHD & V2(GST)30/AHD

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-37 to 40/20-21
दिनांक Date : 29.01.2021 जारी करने की तारीख Date of Issue :

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

ग Arising out of Order-in-Original No ZZ2404200165926, ZR2404200166015, ZT2404200165404 & ZP2404200165737 दिनांक: 09.04.2020 issued by Deputy Commissioner, Division-VI, Central GST, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Adani Logistics Limited, Adani House, Near Mithakhali Six Road, Navrangpura,
Ahmedabad, Gujarat-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) <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.
	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 .

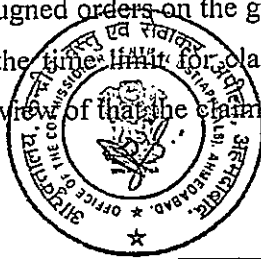
ORDER-IN-APPEAL

M/s Adani Logistics Ltd., Adani House, Near Mithakhali Six Road, Navrangpura, Ahmedabad, Gujarat-380009 (in short 'appellant') has filed these four appeals 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 which were rejected by the adjudicating authority vide the impugned orders.

Sr. No.	OIO No. & Date	Period for which refund claimed	Date of filing of refund claim	Amount of refund claimed (Rs.)	Appeal No.
1	ZZ2404200165926 dated 09.04.2020	January, 2018	19.02.2020	14,786/-	V2(GST)27/ Ahd-South/ 2020-21
2	ZR2404200166015 dated 09.04.2020	December, 2017	19.02.2020	978/-	V2(GST)28/ Ahd-South/ 2020-21
3	ZT2404200165404 dated 09.04.2020	November, 2017	19.02.2020	4,950/-	V2(GST)29/ Ahd-South/ 2020-21
4	ZP2404200165737 dated 09.04.2020	October, 2017	19.02.2020	18,450/-	V2(GST)30/ Ahd-South/ 2020-21

2. Brief stated the facts of the case are that the appellant having GSTIN 24AABCI4157J1ZM are engaged in the business of transportation of goods. They had filed four refund claims for the period mentioned in the above table, under section 54 of the Central Goods and Services Act, 2017 (hereinafter referred to as 'the CGST Act') in form RFD-01 on the ground that they had inadvertently discharged GST under the Reverse Charge Mechanism (RCM) in respect of services of transportation of goods received by them which was not liable to be paid by them. It is their case that as per Sr.No.18 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 read with respective State GST Notification No.12/2017-State Tax (Rate) provides an exemption in respect of transportation of goods by road except for 'goods transport agency' ('GTA') and that in respect of service of transportation of goods received by them during the above period, some of the service providers who had provided the said services do not qualify as GTA as they did not issue a consignment note and accordingly were exempted from payment of GST in terms of the above Notifications. Therefore, in respect of the subject services received from such service providers, who do not qualify as GTA, there was no liability of GST to be discharged. However, they inadvertently considered such service providers as GTA and accordingly, discharged GST liability under RCM in terms of Notification No.13/2017-Central Tax (Rate) dated 28.06.2017 read with respective State GST Notification No.13/2017-State Tax (Rate). Since the inward services received by them as above were not liable to GST under RCM, they had requested for the refund of the GST amount inadvertently paid by them under RCM.

2.1 The said refund claims filed by the appellant were rejected by the adjudicating authority vide the impugned orders on the ground of limitation observing that according to Section 54(1) of CGST Act, the time limit for claiming the GST refund is two years from the date of payment made and in view of that the claims are liable for rejection.

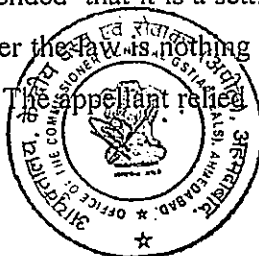


3. Being aggrieved with the rejection of their refund claims vide the impugned orders, the appellant has filed the present appeals on the following grounds:

- The refund claim has been made in respect of an amount paid which was not required / liable to paid as GST. The time limit of two years prescribed under Section 54 of the CGST Act is pertaining to the GST deposited and not in respect of amounts paid which are not liable /required to be paid;
- It is an undisputed fact that the underlying transactions were not leviable to GST under RCM and thus, the amount so paid is merely a deposit which is liable to be refunded;
- It is a settled position in law that the amount so paid which are not liable to be paid under the law is nothing but a deposit and hence the period of limitation of two years does not apply. It is imperative to note that Section 11B of the Central Excise Act, 1944 is *pari materia* to Section 54 of the CGST Act. The appellant places reliance on various judicial rulings delivered in the context of Section 11B of the Excise Act which is *pari materia* to Section 54 of the CGST Act and hence binding on the adjudicating authority. They relied on a number of judicial pronouncements in support of their contention;
- Further to the claim of refund, the appellant is also entitled to compensation in respect of the amount so wrongly withheld by the Central Government and accordingly, the appellant claimed compensation by way of interest @15% p.a. to be calculated from the date of payment till the date of refund. They have relied on various case laws in this regard; and
- It is settled principle that in a scenario where any amount is paid under the mistake of law or is paid in excess of the duty required to be paid, such amount is necessarily required to be refunded along with interest. The appellant has relied on various judicial rulings in support of their contention.

4. Personal hearing in the matter was held on 21.01.2021. Shri Sachin Agarwal, Chartered Accountant appeared for the hearing on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

5. I have carefully gone through the facts of the case, the grounds of appeal and oral submissions made at the time of personal hearing. I find that the issue to be decided in the case is as to whether the claims for refund filed by the appellant in the present case for refund of the amounts inadvertently paid by them as GST under RCM are hit by limitation as per provisions of Section 54 of the CGST Act, 2017 or not. The main argument advanced by the appellant in the matter is that since the amount under dispute paid by them was not required or liable to be paid by them as GST, the said payment made inadvertently would be in the nature of deposit only and not tax and the time limit of two years prescribed under Section 54 of the CGST Act, 2017 is pertaining to the GST deposited and not in respect of amounts paid which are not liable /required to be paid. It is further contended that it is a settled legal position that the amount so paid which are not liable to be paid under the law is nothing but a deposit and hence the period of limitation of two years does not apply. The appellant relied on a number of judicial rulings delivered in the



context of Section 11B of the Excise Act, 1944 contending that Section 11B of the Act *ibid* is *pari materia* to Section 54 of the CGST Act.

6. Refund under the provisions of CGST Act is governed by the provisions of Section 54 of the said Act. Sub-section (1) of the said Section 54 of the Act *ibid* reads as under:

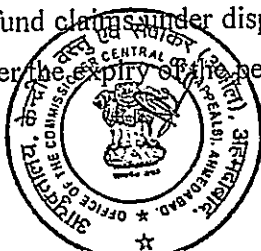
54. Refund of tax.— (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed.

[emphasis applied]

The form and manner for applying for refund under the above said section is prescribed under Rule 89 of the CGST Rules, 2017, relevant portion of which reads as under:

89. Application for refund of tax, interest, penalty, fees or any other amount.- (1) Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

From the above provisions of the Act and the Rules, it is abundantly clear that provisions of Refund under CGST Act provides for refund of not only of tax, interest, penalty and fees but also of any other amount paid. Therefore, the refund of any amount paid under CGST Act, irrespective of the fact that whether it is in the nature of tax or otherwise, would be governed by the said provisions of Section 54 of the Act *ibid* and the Rules thereunder. When the refund of any amount paid is governed by provisions of Section 54 of the Act *ibid*, the limitation provided under the said statute would also be applicable in all such cases. Hence, the contention by the appellant that the limitation prescribed under the said statute is pertaining to GST deposited only does not hold good. The limitation prescribed under Section 54 of the Act *ibid* would be applicable in respect of refund of any amount paid under GST. It is not the case of the appellant that the amount was not paid under GST Law. At the time of payment, it was indeed paid as a tax only but later on realizing that they were not liable to pay the said tax, it turned out to be paid by mistake. Their contention is that the amount paid by them is not tax but only a deposit as they were not liable to pay any in the case. It is observed that the amount paid even in the colour of a deposit, would fall in the category of 'any other amount paid' specified in Section 54 of the CGST Act. Therefore, the limitation prescribed under the said Section would be applicable to refund of amount paid a deposit also, as in the present case. In the appeals under consideration, the refund claims for the period from October-2017 to January-2018 were filed in February 2020 after the expiry of two years from the relevant date. This fact is not refuted by even the appellant. Therefore, the refund claims under dispute in the present cases are to be held as hit by limitation for being filed after the expiry of the period stipulated under the Statute.



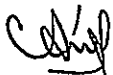
7. Further, regarding the reliance placed by the appellant on the provisions of Section 11B of the Central Excise Act, 1944, it is observed that Section 54 of the CGST Act is distinct from Section 11B of the Central Excise Act, 1944 in as much as Section 11B of the Act ibid does not contain any provision for refund of any amount other than duty of excise and interest, if any paid on such duty unlike in the case of Section 54 of the CGST Act which specifically covers refunds of any other amount paid also. Therefore, the interpretation on scope of limitation that can be raised on refunds of amounts other than duty and interest, if any paid thereon, with respect to Section 11B of the Central Excise Act would not be available in case of Section 54 of the CGST Act for the said Section is covering refund of all kinds of payments made under CGST Law. For the same reason, the case laws relied upon by the appellant in the case stand distinguished as they were in the context of Section 11B of the Central Excise Act and hence is not applicable to the facts of the present case. In view thereof, the reliance placed by the appellant on the provisions of Section 11B of the Central Excise Act, 1944 and the various judicial pronouncements delivered in the context of the said Section does not help their cause for refund in the case.

8. Since the appellant's claims for refund in the matter are liable for rejection for being hit by limitation as discussed, I do not find any relevance or merit in the contentions raised by the appellant on the aspect of compensation by way of granting of interest on the amount of refund claimed.

9. In view of the above discussions, I do not find any reason to interfere with the decision taken by the adjudicating authority vide the impugned order and accordingly, I uphold the same and reject the appeals filed by the appellant being devoid of merits.

10. 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.

Attested:


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

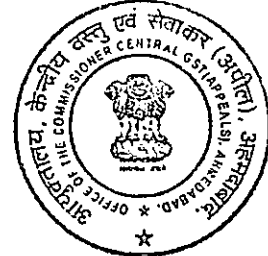
BY SPEED POST TO:

M/s Adani Logistics Ltd.,
Adani House,
Near Mithakhali Six Road,
Navrangpura, Ahmedabad,
Gujarat-380009 .

Copy to:-

1. The Chief Commissioner, Central GST, Ahmedabad Zone..
2. The Principal Commissioner, Central GST, Ahmedabad South.
3. The Commissioner, CGST (Appeals), Ahmedabad.
4. The Deputy Commissioner, Central GST, Division-VI, Ahmedabad South.


(Mukesh Rathore)
Joint Commissioner (Appeals)
Date: 29.01.2021.



5. The Asstt. Commissioner, CGST (System), HQ, Ahmedabad South.
(for uploading OIA on website)
6. Guard file.
7. P.A. File

