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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सत्यमेव जयते

NATION TAX MARKET

DIN-20220164SW000041414A

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/110/2020-APPEAL / 5615 TO 562

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-101/2021-22**
दिनाँक Date : **05-01-2022** जारी करने की तारीख Date of Issue : **05-01-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZW2410200269822** दिनाँक: **22-10-2020** issued by Assitant Commissioner, CGST, Division I-Rakhial, Ahmedabad South

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

M/s. Central Bank of India, Central Bank Building, Lal Darwaja, Ahmedabad-380001

(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 वेबसाइटwww.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

Central Bank of India, Lal Darwaja, Ahmedabad (hereinafter referred to as `the appellant') has filed the present appeal on dated 20-1-2021 against Order No.ZW2410200269822 dated 22-10-2020 (hereinafter referred to as `the impugned order) passed by the Assistant Commissioner, Division I Rakhial, Ahmedabad (South) (hereinafter referred to as `the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant, registered under GSTIN 24AAACC2498P3Z7, has filed refund application for refund of IGST, CGST and SGST paid in excess for Rs.38,15,981/- for the month of March 2018. The appellant was issued show cause notice bearing No.ZV2409200276832 dated 18-9-2020 proposing rejection of the claim on the ground that the claim appears to be time barred under section 54 of the CGST Act, 2017 and as per para 4 of Circular No.26/26/2017-GST dated 29-12-2017 the appellant can adjust the excess balance against tax liabilities of subsequent months. The adjudicating authority vide impugned order rejected the claim on the ground of delay in refund application ; non appearance in personal hearing and failure to upload reply to SCN and on the grounds mentioned in the show cause notice.

3. Being aggrieved the appellant filed the present appeal on the following grounds, wherein they interalia contended that :

i. Rejection of refund application without providing proper opportunity of being heard is bad in Law ;

ii. Audi alteram partem, principle of Maxim-opportunity of being heard, to participate in proceedings is face of natural justice is also requirement of Article 14 of the Constitution of India and denial of the same would amount to violation of Article 14 and Article 21 ;

iii. That the right of audit alteram partem is a valuable right recognized under the Constitution of India and such right cannot be taken even by Courts ;

iv. Principles of natural justice required to be observed by a Court or Tribunal before a decision is rendered involving civil consequents ;

v. This requirement of natural justice is applicable not only to judicial or quasi judicial order but also to administrative order affecting prejudicially the party in question;

vi. Article 14 enshrines that every person should be treated equally. The principle of natural justice comes into force when no prejudice is cause to anyone in any administrative action. The principle of Audi Alteram Partem is the basic concept of the principle of natural justice ;

vii. The second fundamental principle of natural justice is audi alteram partem ie no man should be condemned unheard or both the sides must be heard before passing any order ;

viii. This is the first principle of civilized jurisprudence and is accepts by laws of men and God. In short before an order is passed against any person, reasonable opportunity of being heard must be given to him. Generally this maxim includes two elements 1) Notice and ii) hearing.

ix. That before any action is taken the affected party must be given a notice to show cause against the proposed action and seek his explanation. It is sine qua non of the right of fair hearing. Any order passed without giving notice is against the principles of natural justice and is void ab initio.

x. Before taking any action it is the right of the person to know the facts. The appellant relied on various judgements of Hon'ble Madras High Court and Hon'ble Delhi High Court in support of their contention.

xi. That they were issued show cause notice dated 18-9-2020 and personal hearing was scheduled on 1-10-2020. They had sought adjournment of 15-20 days as their tax matters are handled through their HO at Mumbai and also due to Covid 19 situation. They could not appear for next hearing also due to above reasons as no intimation was received and hence no further opportunity of being heard was provided to the appellant, However they had furnished reply to the SCN explaining the reasons as to why the claim was not time barred ;

xii. That the impugned order has simply proceeded on an incorrect premise as the merits of the refund claim have not been taken up for verification. Further the adjudicating authority has grossly erred in as much as it has failed to provide an opportunity of being heard to the appellant before passing the order of rejection of refund.

xiii. That the application was made to claim the excess amount of tax payment of GST that was made through GSTR3B return filed for the month of March 2018. The excess payment was a result of adhoc payment of taxes made during the initial period of implementation of GST in appellant's banking system.

xiv. The excess payment of tax was absolutely due to excess ascertaining of out taxable supply for the FY 2017-2018 which was identified later while comparing the date of GSTR3B with the Financial Statement at the time of submitting Annual Return for FY 2017-2018 in the month of January 2020. Copy of GSTR9 and GSTR 9C submitted. Accordingly the excess payment of IGST comes to Rs.26,60,273/- ; CGST comes to 5,77,854/- and SGST comes to Rs.5,77,854/- and refund amount comes to Rs.38,15,981/-

xv. The only reason for not claiming the refund on immediate basis for such evident and inadvertent error on the part of the appellant was due to uncertainty regarding the refund procedures ;

xvi. In the instant case the claim was rejected due to delay in filing of refund application and thus the application could not be processed by the authority which is unfair on the part of the authority ;

xvii. The claim was made for the month of March 2018 and taxes was deposited/paid on 27th April 2018 and hence time limit for filing of refund claim was upto 20th April 2020 and as per Notification No.35/2020 dated 3-4-2020 read with Notification No.55/2020 dated 27-6-2020 the due date was further extended to 31st August 2020 and hence the application was well within the time limit ;

xviii. That Article 265 of Indian Constitution is most important part of the Taxation which says that no tax shall be levied or collected except by the `Authority of Law'. The appellant relied upon various case laws in support of their contention.

xix. That the Hon'ble Supreme Court visualized several hypothetical situation and answered questions but for the purpose of this case the following two distinct situations/categories are required to be examined. The first situation is where the tax is collected or voluntarily paid to the authority under a valid enactment but by misconstruing or by wrong interpretation of the provisions of the enactment or by erroneous determination of relevant facts. The second category of cases is where the enactment by which tax is levied is an unconstitutional enactment or its provisions transgress the constitutional limitations. In such cases refund becomes due because enactment/statue imposing the tax or the provision is unconstitutional. This second category of cases will normally be cases i) where legislative competence of the legislature is challenged and questioned on the basis of entries in the Seventh Schedule of the Constitution 2) where law is prohibited by any particular provision of the Constitution etc. Articles 276 (2), 286 etc. and 3) the wrong or relevant portion thereof is invalid under Article 13 for repugnancy to those freedoms, which are guaranteed by Part III of the Constitution. (Chhotabhai Jethabhai Patel Co Vs COI (1962) Suppl. 2 (SCR 1).

xx. Another principle is that the refund provisions should be interpreted in a reasonable and practical manner and when warranted, liberally, in favor of the Assessee. If there is substantial compliance of the provisions for refund, it may not be denied because it is not made strictly in the form or manner prescribed. The forms prescribed may be merely intended to facilitate payment of refund. The tax authorities have to act judiciously when they exercise their power under an enactment. The powers given to the tax authorities under the enactments are mandated with the duty to exercise them when the statutory provisions so warrant. It is imperative with the duty to exercise their authority in an appropriate manner. In case the assessing officer or tax authority comes to know that an assessee is entitled to a deduction, relief or refund, based on the facts of the case and the assessee has omitted to make the claim, he should draw the attention of the assessee. The tax authorities should act as facilitators and not occlude and obstruct.

xxi. That excess GST payment mentioned in the case was not payable and as a corollary, what was paid by the appellant was not GST but merely a cash payment which can be termed as cash deposit in electronic cash ledger and hence time limit to avail the refund as stated in Section 54 of CGST is applicable. This has been stated by the appellant as the appellant was not liable to pay the excess amount as stated in the above calculation. The amount paid here was not against any liability raised on the taxable outward supplies of the appellant but was an excess amount, which can be considered as deposit paid without any corresponding outward taxable supplied. One of the major reasons for this payment can be stated as the adhoc payments made by the Bank in the initial phase of the GST regime due to technical issues in handling the shift from the erstwhile regime to the new GST regime. Thus this amount cannot be considered as a tax amount but rather a deposit in the cash ledger as stated above.

xxii. In support of their above contention the appellant relied upon following case laws :

M/s.Aryas Grains Pvt.Ltd Vs CCE Raipur 2019 (12) TMI 1092 (Cestat New Delhi)

M/s.Sunrise spices ltd Vs CCE Jaipur I 2019 (4) TMI 481 CESTAT New Delhi

M/s. ONGC Vs UOI – 2017 (5) TMI 145 – Gujarat High Court

M/s.Parijat Construction Vs CCE Nasik 2017 (10) TMI 659-Bombay High Court

M/s.Natraj and Venkat Associates Vs Assistant Commissioner, Service Tax, Madras High Court

CCE (Appeals) Banglore Vs KVR Construction – Karnataka High Court

xxiii. In view of above decisions the issue is no more res integra. The decisions as mentioned above have clearly held that the limitation period prescribed under Section 11B of the Central Excise Act is not applicable to the refund claim for service tax paid under mistake of law. As the Section 11B is applicable only qua the deposit of duty of excise and where the amount is deposited under mistake ie due to non leviabliity or exemption, the said payment cannot be clothed with the description of duty of excise.

xxiv. At the time of filing of Annual Return for the FY 2017-2018 reconciliation as per Section 44 (2) of CGST Act, 2017 was made. As per Section 44 (2) reconciliation means, reconciling the value of supplies declared in the return furnished for the Financial Year with the audited Annual Financial Statement. Such reconciliation with Financial Statement also resulted into clarifying the amount paid in excess during the entire FY 2017-2018. Thus the refund which was mainly due to excess payment of GST in the GSTR 3B for the month of March 2018, was ascertained at Rs.26,60,273/- against IGST and Rs.5,77,584/- against CGST and SGST each.

xxv. The GST reconciliation statement/computation prepared at the time of filing of Annual Return for the FY 2017-2018 clearly shows, explains and support their claim of refund of IGST of Rs.38,15,981/-.

xxvi. The refund application was accompanied with documents such as GSTR9, 9C and the reconciliation statement based on which the refund was computed, which were attached while filing in Form RFD 01 dated 31-8-2020. The appellant had made an excess payment of tax under tax head IGST which can be ascertained from the records. After submitting all the above mentioned details/documents on record, the refund claim was rejected without considering the submissions and without granting an opportunity of being heard on the reasons of delay in refund application.

xxvii. Till clarification issued vide press release dated 3rd July 2019 regarding excess payment, the appellant was under bonafide belief that the refund can be claimed through GSTR9 or adjustment of excess tax can be done in GSTR9.

xxviii. That the incidence of tax being claimed as refund has not been passed on any other person which can be ascertained from Financial Statement and Reconciliation statements filed at the time of Annual Audit for the FY 2017-2018.

4. In view of above submissions the appellant requested to set aside the impugned order and provide an opportunity of being heard.

5. Personal hearing was held on dated 14-12-2021. Shri Chaitanya Joshi, Chartered Accountant appeared on behalf of the appellant on virtual mode. He made additional submission via email dated 14-12-2021 along with sanction order copies of other States. Vide their email dated 14-12-2021 the appellant has given a list of claims filed by them for the FY 2017-2018, 2018-2019 and 2019-2020 which has been sanctioned in adjudicating authorities of different States of India, totally amounting to Rs.4,38,64,668/-. They contended that all the refund claims have been filed by them due to excess payment made through GSTR3B returns and DRC 03 for the respective Financial Years as compared to the actual liability that was derived while filing the Annual Return and reconciliation statement in Forms GSTR 9 and GSTR9C respectively. The appellant requested to go through the factual submissions provided by them.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. In this case refund claim was filed for refund of IGST, CGST and SGST totally amounting to Rs.38,15,981/- paid in excess in GSTR3B returns, which was noticed on reconciliation made at the time of preparation and filing of Annual Return for the FY 2017-2018. The entire claim was rejected vide impugned order on the ground of non appearing for PH; failure to upload reply to SCN and on the grounds mentioned in SCN and non compliance of the same. I further find that in the SCN it was mentioned that the claim was time barred and as per Circular No.26/26/2017-GST dated 29-12-2017 such excess balance against tax liabilities can be adjusted of subsequent months. Apparently, the claim was rejected on the ground of time limitation factor and non appearance for personal hearing and not uploading reply to the SCN and no other grounds bearing on admissibility of refund is disputed.

7. At the outset, I take up the issue of time limitation factor. I find that as per Section 54 of CGST Act, 2017 the due date for filing refund claim is two years from relevant date. The relevant date for various types of refund is given under clause a to h in Explanation (2) of Section 54. It is observed none of the situation mentioned in clause a to g is applicable for refund of excess payment of tax and hence as per clause 'h' the date of payment of tax is to be reckoned as relevant date. As per appellant's contention, the claim pertains to the month March 2018 and they had paid/deposited tax for the month of March 2018 on 27th April 2018 and hence the due date for filing of refund claim fall on 26th April 2020 which was further extended vide Notification No.55/2020 to 31st August 2020 and that they had filed the claim within the time limit. I further notice that the claim was filed on 31-8-2020 ie on the last day of extended period.

8. The claim in this case in fact arise on account of reconciliation of value of taxable supply and tax paid shown in GST3B returns with their Annual Financial Statement at the time of filing of GSTR 9 and 9C returns as per Section 44 of CGST Act, 2017 read with Rule 80 of CGST Rules, 2017. Further, vide Press Release dated 3 rd July 2019, CBIC has issued further clarification regarding Annual Return as under :

The Government has been receiving a number of representations regarding Annual Return (FORM GSTR-9 / FORM GSTR-9A) and Reconciliation Statement (FORM GSTR-9C). In this regard the following clarifications are issued for information of all stakeholders: -

a) Payment of any unpaid tax: Section 73 of the CGST Act provides a unique opportunity of self – correction to all taxpayers i.e. if a taxpayer has not paid, short paid or has erroneously obtained/been granted refund or has wrongly availed or utilized input tax credit then before the service of a notice by any tax authority, the taxpayer may pay the amount of tax with interest. In such cases, no penalty shall be leviable on such tax payer. Therefore, in cases where some information has not been furnished in the statement of outward supplies in FORM GSTR-1 or in the regular returns in FORM GSTR-3B, such taxpayers may pay the tax with interest through FORM GST DRC-03 at any time. In fact, the annual return provides an additional opportunity for such taxpayers to declare the summary of supply against which payment of tax is made.

b) Primary data source for declaration in annual return: Time and again taxpayers have been requesting as to what should be the primary source of data for filing of the annual return and the reconciliation statement. There has been some confusion over using FORM GSTR-1, FORM GSTR-3B or books of accounts as the primary source of information. It is important to note that both FORM GSTR-1 and FORM GSTR-3B serve different purposes. While, FORM GSTR-1 is an account of details of outward supplies, FORM GSTR-3B is where the summaries of all transactions are declared and payments are made. Ideally, information in FORM GSTR-1, FORM GSTR-3B and books of accounts should be synchronous and the values should match across different forms and the books of accounts. If the same does not match, there can be broadly two scenarios, either tax was not paid to the Government or tax was paid in excess. In the first case, the same shall be declared in the annual return and tax should be paid and in the latter all information may be declared in the annual return and refund (if eligible) may be applied through FORM GST RFD-01A. Further, no input tax credit can be reversed or availed through the annual return. If taxpayers find themselves liable for reversing any input tax credit, they may do the same through FORM GST DRC-03 separately.

9. In view of above, I find that Form GSTR-9C is a reconciliation statement, which is to be furnished annually along with annual return in Form GSTR-9, by the taxpayer whose aggregate turnover is above a specified limit, ie two crores during a financial year duly verified and digitally signed by Chartered Accountant/ Cost Accountant. It is an annual compilation of outward supplies, inward supplies, tax liability, ITC etc. of a financial year. The purpose for such reconciliation is to reconcile the turnover, tax liability, tax paid, ITC availed etc. shown in periodical GSTR3B return with Annual Financial Statement with due certification by the statutory auditor. It is a statement primarily prepared for rectifying and regularizing any information or details left out in the periodical returns. In case of any short payment of tax or wrong availment of ITC, it facilitates the tax payer to pay the same, along with interest, through FORM GST DRC-03. As per clarification issued by the Board vide Press Release dated 3-7-2019, such rectification can be made not only on short payment of tax and wrong availment of

ITC but also for any excess payment of tax noticed at the time of reconciliation by way of filing of refund application. I find that the circumstances which lead to claim of refund is on account of excess payment of tax noticed at the time of reconciliation and filing of GSTR Form 9 and 9C returns.

10. In this case the appellant's claim that the excess payment on account of reconciliation has arisen in the month of March 2018 and hence taking into account the date of payment of tax liability for the month of March 2018 which is 27th April 2018 the claim filed on 31-8-2020 was within the extended time limit prescribed for filing of refund claim. In support of the same they had also furnished copy of GSTR3B return for the month of March 2018 and copy of GSTR 9 and 9 C returns. On scrutiny, I find that claim amount is arrived on account of difference between tax paid in GSTR3B returns and tax liability as per Form GSTR9 and 9C returns as under :

Particulars	IGST	CGST	SGST	Total
Output liability as per GSTR9/9C for the year 2017-2018	46240636	62864150	62864150	171968936
RCM Liability as per GSTR9/9C for the year 2017-2018	360462	1987720	1987720	4335902
TOTAL	**46601098**	**64851870**	**64851870**	**176304838**
Tax paid through ITC as per GSTR3B	38859442	10451589	10451589	59762620
Tax paid by cash as per GSTR3B	10401929	54978135	54978135	120358199
TOTAL	**49261371**	**65429724**	**65429724**	**180120819**
Difference between tax paid in GSTR3B and tax payable as per GSTR 9/9C claimed as refund	**2660273**	**577854**	**577854**	**3815981**

11. As per above table, the difference between the total tax payable and total tax paid during the entire Financial Year 2017-2018 is claimed as refund. On scrutiny of GSTR3B return filed for the month of March 2018 I find that total tax paid during the month of March 2018 was Rs.5,97,62,620/-. Thus, out of total tax of Rs.18,01,20,819/- paid in GSTR3B return for the year 2017-2018, tax of Rs.5,97,62,620/- pertains to the month of March 2018 and remaining tax 12,03,58,199/- pertains to the period July 2017 to February 2018. Since the refund amount was arrived as difference between tax payable and tax paid during the entire financial year, I do not find it a logical view to consider that the entire amount of excess payment has occurred in March 2018 only. I find that in claims of this nature, it is imperative on the part to appellant to substantiate with evidence the actual month in which excess payment has occurred in the form of certificate from Statutory Auditor or Chartered Accountant. However, in the subject case the appellant has not brought on record any such evidences. As per Section 54 of CGST Act, 2018 for claim of refund of excess payment of tax the due date is prescribed as two years from relevant date, which is date of payment of tax. Accordingly, in the subject case the relevant date is to be reckoned from the date of payment of tax for the month in which the excess payment has occurred. Under the above circumstances in the absence of evidence indicating the month in which excess payment has occurred, I could not consider that the entire amount of excess payment has occurred in the month of March 2018 itself. Consequently, the claim filed on 31-8-

2020 considering excess payment of tax in March 2018 also cannot be considered as filed within the time limit.

12. With regard to submissions made for non issue of show cause notice, I find that in this case show cause notice was issued on dated 18-9-2020 proposing rejection of claim on grounds of time limitation factor. The appellant vide their letter dated 1-10-2020 has also filed reply to the show cause notice. Therefore, submission that the order was passed without issue of notice is devoid of any merit. Regarding non grant of personal hearing, I find that in the show cause notice itself personal hearing was scheduled on 1st October 2020 for which the appellant sought adjournment on the reason that their taxation matters were handled at their Head Office at Mumbai and due to COVID 19 pandemic. Another date was also fixed for personal hearing but the appellant has not appeared for the second hearing due to above reasons. Thus the procedures, prescribed under Rule 92 of CGST Rules, governing rejection of refund claim has been followed in this case. Consequent to implementation of GST based tax regime, all procedures governing refund viz. filing of refund claim, issuance deficiency memo, reply to deficiency memo, issuance of show cause notice, reply to SCN, issuance of refund sanction/rejection order, has been made online. Similarly due to Covid 19 pandemic the conduct of personal hearing was also made on virtual mode. However, from the face of facts it transpire that the appellant has not opted for online mode of compliance which should have otherwise enabled them to present their stand within time. Therefore I do not find any justification in raising grievance made for non grant of personal hearing and non issue of SCN before rejection of refund claim.

13. Regarding submissions made referring to Article 265 of Indian Constitution and related case laws and also on the basis of sanction of claims in other States, I reiterate that the admissibility of refund on merits is not questioned in the impugned order and claim was rejected primarily on time limitation factor in filing refund claim. Therefore I find submission made in this regard is irrelevant to the subject case.

14. Another submission made by the appellant is that the excess GST payment was not GST but a cash deposit in electronic cash ledger for which time limit under Section 54 of CGST Act is not applicable. In this regard, I find that the refund claim made by the appellant is on account of excess payment of tax. In their submissions also they had mentioned that refund was claimed for excess payment of tax, paid by them. I also refer to Press Note dated 3-7-2019 issued by Government wherein it was clarified that in case of excess payment of tax detected during reconciliation, refund if eligible may be applied through Form GST RFD 01A. As per Rule 89 of CGST Rules, 2017, Form GST RFD 01 is prescribed for claim of refund of any tax, interest, penalty or any other amount paid by registered person and for claim of refund relating to balance in electronic cash ledger the claim can be made through GSTR3 or GSTR4 or GSTR 7 returns. In the subject case the appellant has filed claim in RFD 01 which indicate that the claim was filed for excess tax paid by them. Moreover, the appellant in their ground of appeal consistently referred the claim amount as excess payment of tax. Therefore, so long as the claim amount was utilized for discharging tax, it cannot be considered as deposit but a tax payment. Hence I find

that provisions of Section 54 which governs refund of tax paid is squarely applicable to the subject case.

15. Regarding case laws relied upon by the appellant in support of their contention that period of limitation is not applicable to the subject claim, I find that case law of M/s.Sunrise Spices ltd Vs CCE Jaiput ; UOI Vs M/s.ITC Ltd ; ONGC Vs UOI ; Ms Natraj and Venkat Assosicates Vs Assistant Commissioner ; CCE (Appeals) Vs KVR Construction mandate for entitlement of refund in the situations covered in the respective cases. In this case, I further put on record that the admissibility of claim was not disputed but only on the reason of delay in filing the refund claim the claim was rejected. In other words, entitlement for refund is not disputed. In the case Law of M/s.Aryas Grains Pvt ltd Vs CCE, Raipur and M/s.Parijat Constructions Vs CCE, Nashik relied by the appellant I find that it was held that limitation prescribed under Section 11B of erstwhile Central Excise Act, 1944 for claiming refund is not applicable when duty/tax was paid under mistake of Law. In the subject case, it is not being placed on record that the excess payment in question was due to payment made under mistake of Law. I also note that contra decisions are also available in cases involving the issue of applicability of limitation under Section 11B for claim of refund. In this regard I refer to Hon'ble CESTAT Ahmedabad's Order dated 18-3-2020 in the case of M/s.Comex Vs CCE & ST, wherein similar issue was dealt with by the Tribunal. The relevant para of the decision is as under :

4. We find that there are decisions on the either side of the issue. There were decisions holding that provisions of Section 11B are not applicable to any amount which was paid by mistake or which was not payable. In these decisions the arguments forwarded was that the amount paid is not duty and Section 11B applies only to duty. It is difficult to comprehend that as to under what circumstances the provisions of Section 11B of Central Excise Act, 1944 can be invoked to claim the refund. The only provision under Central Excise Act which permits refund is Section 11B of the Act. The decisions relied by learned Chartered Accountant held that any amount which was not due to be paid or which was paid by mistake is not duty and therefore, the provisions relating to limitation under Section 11B does not apply. It needs to be noted that entire Section 11B relates to refund of duty. This issue has been examined by Hon'ble Apex Court in the case of Collector of Chandigarh vs. Doaba Co-operative Sugar Mills – 1988 (37) E.L.T 478 (SC) wherein it has been observed that:-

> *"6. It appears that where the duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed thereunder have no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light. But in making claims for refund before the departmental authority, an assessee is bound within four corners of the Statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act. If the proceedings are*

taken under the Act by the department, the provisions of limitation prescribed in the Act will prevail. It may, however, be open to the department to initiate proceedings in the Civil Court for recovery of the amount due to the department in case when such a remedy is open on the ground that the money received by the assessee was not in the nature of refund. This was the view taken by the Tribunal in a previous decision in the case of Miles India Ltd. v. The Assistant Collector of Customs but it was assailed before this Court. The appeal was withdrawn. This Court observed that the Customs Authorities, acting under the Act, were justified in disallowing the claim for refund as they were bound by the period of limitation provided therefore in the relevant provisions of the Customs Act, 1962. If really the payment of the duty was under a mistake of law, the party might seek recourse to such alternative remedy as it might be advised. See the observations of this Court in Miles India Ltd. v. The Assistant Collector of Customs [1987(30) E.L.T.641 (S.C.) = 1985 E.C.R. 289].

5. On the analysis of above judgments of Hon'ble Supreme Court, the gist is that any refund filed before the Customs/Central Excise authorities can only process the claim under Customs/Central Excise Acts and the departmental authorities have no jurisdiction to go beyond the provisions made under the Act and limitations provided under Section 27/Section 11B."

5. A similar view has also been given by Larger Bench of the Tribunal in the case of Veer Overseas Limited vs. CCE, Panchkula – 2018 (15) GSTL 59 (Tri. LB). In the said decision, in Para 8 and 9 the Larger Bench examined the decisions of various Courts where Section 11B has been held to be not applicable to refund of any amount made under any mistake of law. The Larger Bench, after examining the said issue, has come to the following conclusion:-

"7. What is crucial is that the appellants paid the claimed amount as service tax. They have approached the jurisdictional authority of service tax for refund of the said money. It is clear that the jurisdictional service tax authority is governed by the provisions of Section 11B as the claim has been filed as per the said mandate only. Here, we have specifically asked the Learned Counsel for the appellant under what provision of law he is seeking the return of the money earlier paid. He admitted that the claim has been preferred in terms of the provisions of Section 11B. If that being the case, it cannot be said that except for limitation other provisions of Section 11B will be made applicable to the appellant. The Learned Counsel also did not advance such proposition. He repeatedly submitted that the amount is paid mistakenly. The same is not a tax and should be returned without limitation as mentioned in Section 11B. We are not convinced by such submission.

8. Here it is relevant to note that in various cases the High Courts and the Apex Court have allowed the claim of the parties for refund of money without applying the provisions of limitation under Section 11B by holding that the amount collected has no sanctity of law as the same is not a duty or a tax and accordingly the same should be returned to the party. We note such remedies provided by the High Courts and Apex

Court are mainly by exercising powers under the Constitution, in writ jurisdiction. It is clear that neither the jurisdictional service tax authority nor the Tribunal has such constitutional powers for allowing refund beyond the statutory time-limit prescribed by the law. Admittedly, the amount is paid as a tax, the refund has been claimed from the jurisdictional tax authorities and necessarily such tax authorities are bound by the law governing the collection as well as refund of any tax. There is no legal mandate to direct the tax authority to act beyond the statutory powers binding on them. The Hon'ble Supreme Court in Mafatlal Industries Ltd. (supra) categorically held that no claim for refund of any duty shall be entertained except in accordance with the provisions of the statute. Every claim for refund of excise duty can be made only under and in accordance with Section 11B in the forms provided by the Act. The Apex Court further observed that the only exception is where the provision of the Act whereunder the duty has been levied is found to be unconstitutional for violation of any of the constitutional limitations. This is a situation not contemplated by the Act. We note in the present case there is no such situation of the provision of any tax levy, in so far as the present dispute is concerned, held to be unconstitutional. As already held that the appellant is liable to pay service tax on reverse charge basis but for the exemption which was not availed by them. We hold that the decision of the Tribunal in Monnet International Ltd. (supra) has no application to decide the dispute in the present referred case. We take note of the decision of the Tribunal in XL Telecom Ltd. (supra). It had examined the legal implication with reference to the limitation applicable under Section 11B. We also note that the said ratio has been consistently followed by the Tribunal in various decisions. In fact, one such decision reached Hon'ble Supreme Court in Miles India Limited v. Assistant Collector of Customs – 1987 (30) E.L.T. 641 (S.C.). The Apex Court upheld the decision of the Tribunal to the effect that the jurisdictional customs authorities are right in disallowing the refund claim in terms of limitation provided under Section 27(1) of the Customs Act, 1962. We also note that in Assistant Collector of Customs v. Anam Electrical Manufacturing Co. – 1997 (90) E.L.T. 260 (S.C.) referred to in the decision of the Tribunal in XL Telecom Ltd. (supra), the Hon'ble Supreme Court held that the claim filed beyond the statutory time limit cannot be entertained.

9. The Apex Court in Mafatlal Industries Ltd. (supra) observed that the Central Excise Act and the Rules made thereunder including Section 11B too constitute "law" within the meaning of Article 265 and that in the face of the said provisions – which are exclusive in their nature no claim for refund is maintainable except and in accordance therewith. The Apex Court emphasized that "the provisions of the Central Excise Act also constitute "law" within the meaning of Article 265 and any collection or retention of tax in accordance or pursuant to the said provisions is collection or retention under "the authority of law" within the meaning of the said Article".

10. Having examined various decided cases and the submissions of both the sides, we are of the considered view that a claim for refund of service tax is governed by the provision

of Section 11B for period of limitation. The statutory time limit cannot be extended by any authority, held by the Apex Court."

6. In the aforesaid circumstances, we find that the decisions relied on by the appellant in his support were passed without appreciating the decision of Hon'ble Apex Court in the case of Doaba Co-operative Sugar Mills (supra) and in the case of Mafatlal Industries Limited vs. UOI – 1997 (89) ELT 247 (SC). In both these decisions it has been categorically held that refund under Central Excise Act would be governed by Section 11B. In these circumstances, we find that the refund claim filed by the appellant would be governed by the provisions of limitation prescribed under Section 11B of Central Excise Act, 1944. Since the refund was filed after expiry of limitation the same cannot be entertained.

16. I find that as per above decision it was held that limitation provided under Section 11B of erstwhile Central Excise Act 1944 is applicable for claim of refund of duty in all cases including duty paid under mistake of Law. Since the decision rendered in above case is contradictory to the case laws referred by the appellant, I find that the submission made by the appellant relying upon the case laws referred by them is not sustainable.

17. In view of above facts and discussions, I hold that the appellant could not conclusively establish that that the refund claim filed by them is within the time limit prescribed under Section 54 of CGST Act, 2017 and also within the extended time period but from the facts of the case the claim filed on 31-8-2020 is time barred. I further hold that the grounds raised in appeal for non issue of show cause notice and non grant of personal hearing also not sustainable as per discussion made in preceding paras. I also find that the appellant has not made any submission regarding point raised referring to Circular No.26/26/2017-GST dated 29-12-2017 in the show cause notice. Hence, I do not record any discussion on this point. Therefore, on the basis of facts of the case and discussions, I do not find any infirmity in the impugned order passed by the adjudicating authority rejecting the refund application on the above reasons. Accordingly I upheld the impugned order and reject the appeal filed by the appellant.

18. अपीलकर्ताद्वारादर्जकीगईअपीलोकानिपटाराउपरोक्ततरीकेसेकियाजाताहै।
The appeals filed by the appellant stand disposed off in above terms.

05/01/2022

(Mihir Rayka)
Additional Commissioner (Appeals)

Date :
Attested

(Sankara Raman B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad
By RPAD

To,
Central Bank of India,
Lal Darwaja,
Ahmedabad

By RPAD

To,

M/s. Central Bank of India,
Central Bank Building,
Lal Darwaja, Ahmedabad-380001

Copy to :

1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
3) The Commissioner, CGST, Ahmedabad South
4) The Assistant Commissioner, CGST, Division I, Ahmedabad South
5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
6) Guard File
7) PA file