



सत्यमेव जयते

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

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/732/2021-APPEAL /5838 TO 5843
ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-111/2021-22**
दिनांक Date : **19-01-2022** जारी करने की तारीख Date of Issue : **19-01-2022**

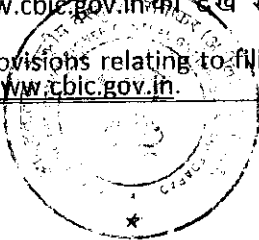
श्री मिहिर रायका अग्र आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZT2401210035624** दिनांक: **05-02-2021** issued by
Assistant Commissioner, CGST, Division I-Rakhial, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Gala Global Products Ltd., B1, Laxmi Com Co-Opve Estate,
Ajod Dairy Road, Sukharamnagar Ahmedabad-380021

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



ORDER IN APPEAL

M/s.Gala Global Products Ltd., B1, Laxmi Com Co-Opve Estate, Ajod Dairy Road, Sukharnanagar Ahmedabad 380 021 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 8-4-2021 against Order No.ZT2401210035624 dated 5-2-2021 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Division I Rakhial, Ahmedabad (hereinafter referred to as 'the adjudicating authority')

2. Briefly stated the fact of the case is that the appellant vide application dated 7-11-2020 has filed refund claim for Rs.1,14,930,73/- for refund of ITC accumulated due to inverted tax structure for the period July 2017 to May 2020. The appellant was issued show cause notice 15-12-2020 proposing rejection of claim on various grounds viz. time limitation factor; non submission of documents; mismatch in figures etc. The appellant filed reply to the show cause notice on dated 31-12-2020 wherein they had requested for seven more days time for submission of documents. The adjudicating authority vide impugned order rejected the entire claim amount on the following ground :

The claimant neither appeared for PH on given date nor complied the objections raised in the SCN. Request for extension for submission could not be considered as refund being time bound matter. Accordingly the claim is rejected under Section 54 of CGST Act, 2017.

3. Being aggrieved the appellant filed the present appeal on the following grounds :

- i. That the order passed by the adjudicating authority is not in consonance with the principles of justice, equity and good conscious which requires to be set aside: The adjudicating authority is not justified in not granting sufficient opportunity of being heard in respect to the queries raised in the show cause notice.
- ii. That they had uploaded necessary documents along with the refund application in view of Circular No.125/44/2019-GST dated 18-11-2019 which is to be considered as complete as the Acknowledgement dated 13-11-2020 was issued ;
- iii. That the adjudicating authority has erred in rejecting the claim for the entire period on the ground of time barred, The application made by them on 7-11-2020 is within the time limit in terms of clause (e) of Explanation (2) to Section 54 of CGST Act, 2017 and in view of judgment of Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No.3 of 2020 dated 8-3-2021 ;
- iv. That they had made application for refund with all the necessary documentary evidences in terms of Rule 89 read with Circular NO.125/44/2019-GST dated 18-11-2019 ;
- v. That they had requested to grant one week time for giving necessary clarification in respect of show cause notice. However the adjudicating authority has not accepted their request and rejected the application which is against the principles of natural justice. In support, the appellant relied upon the judgment of Hon'ble Bombay High Court in the case of M/s.BA Continuum India (P) Ltd Vs UOI (2021) 125 taxmann.com 180 (Bombay).
- vi. Considering the above facts, provisions of Law and judgments the appellant requested to set aside the impugned order and grant refund along with interest.

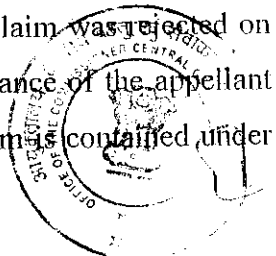
4. Personal hearing was held on 17-11-2020. Shri Tapan N Patel, Authorized representative appeared on behalf of the appellant on virtual mode. He asked for seven days for submission of additional informed which is allowed.

5. Accordingly, the appellant vide letter dated 24-11-2021 filed additional submissions wherein they interalia stated that :

- i. That they had filed application for refund for the period July 2017 to March 2020 on 7-11-2020 which is well within two years from relevant date as per Section 54 of CGST Act, 2017 and in view of judgement of Hon'ble Supreme Court in suo moto Writ Petition (Civil) 3 of 2020 vide which Hon'ble Supreme Court has extended the time limit for filing petitions, applications, suits, appeal and other proceedings on account of Covid 19 pandemic. Hence proper officer is not justified in rejecting the application of refund on the ground of delay ;
- ii. The proper officer has not provided the sufficient opportunity of being heard with respect to queries raised in the show cause notice. The appellant replied to the show cause notice and requested for time. However the proper officer did not grant opportunity of being heard and rejected the application ;
- iii. That with respect to the show cause notice the submitted point wise reply as under :
- iv. For point 1 they reiterated submission made in para (i) above
- v. That for point No.3 they were asked to provide the documents as prescribed under Notification No.40/2017-CT (rate) dated 23-10-2017 in respect of benefit of concessional rate of tax @ 0.05% in respect to the goods supplied to registered recipient for export and they submit herewith relevant documents.
- vi. That with regard to point No.3 and point No.5 of show cause notice they submit updated Annexure B.
- vii. That with regard to point No.4 ie compliance to Notification NO.49/2019-CT dated 9-10-2019 and Notification No.75/2019-CT dated 26-12-2019 they had already submitted required documents as prescribed in the Circular No.125/44/2019-GST ;
- viii. As regard to point No.6, the amount of ITC mentioned in the updated Annexure B and Statement 1A are the total ITC including the tax credit of the input service of the period for which application for refund is made, whereas in Form RFD 01 the appellant has considered the ITC of the inputs only as per the meaning of net ITC given vide explanation given under Rule 89 (5) of the CGST Rules.

6. In view of above submissions and considering the provisions of the Law and the judgments relied by them they requested to grant refund of ITC on account of inverted duty structure along with interest.

7. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that in this case the entire claim was rejected on the ground of non submission of reply to the show cause notice and non appearance of the appellant during personal hearing. I find that provisions governing rejection of refund claim is contained under Rule 92 (3) of CGST Rules, 2017 as under:



Rule 92 (3) of CGST Rules 2017 :

Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

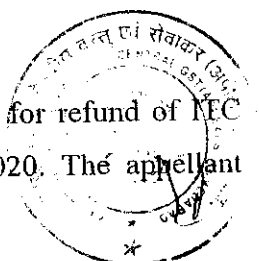
Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

8. In the subject case, the claim was filed on dated 7-11-2020 and SCN was issued on dated 15-12-2020. The appellant vide their reply dated 31-12-2020 has requested for seven more days time for submission of documents, but the same has not been acceded and consequently the impugned order was passed on dated 5-1-2021. However, by doing so, it emerge that the claim was rejected without considering reply to the show cause notice and without affording an opportunity of personal hearing to the appellant which was against the provisions of Rule 92 of CGST Rules, 2017. I also notice that show cause notice was issued after more than one month from the date of filing of refund application due to which delay has occurred on the part of adjudicating authority also. Besides, in the show cause notice certain documents were called for from the appellant. As per Rule 90 of CGST Rules, 2017 the proper course of action for such requirements is by way of issue of deficiency memo rather than through show cause notice. I find that principles of natural justice require that a person receive a fair and unbiased hearing before a decision is made that will negatively affect them. Hence the principles of natural justice, which provide protection of the rights of the individual against the arbitrary procedure, need to be followed in every judicial, quasi judicial proceeding while making an order affecting those rights. Since, the right to claim refund of tax is enshrined in Statute it is imperative to afford opportunity of being heard to the appellant before rejecting their claim. I find that the judgment of Hon'ble Bombay High Court in the case of M/s.BA Continuum India (P) Ltd Vs UOI (2021) 125 taxmann.com 180 (Bombay) cited by the appellant also mandate this view. In view of above, I find that the provisions governing rejection of refund claim provided under CGST Rules, 2017 has not been followed in this case and on this ground itself the impugned order deserve to be set aside.

9. However, I find that the appellant in their appeal has given compliance to each points raised in the SCN and hence I record my discussions on the same as under :

A) The claim was time barred :

10. In this case the appellant has filed refund application on dated 7-11-2020 for refund of IEC accumulated due to inverted tax structure for the period July 2017 to May 2020. The appellant



submitted that relevant date in the case of refund on account of inverted duty structure is the end of financial year in which such claim of refund arises as per clause (e) of Explanation (2) to Section 54 of CGST Act, 2017. They also referred to judgment dated 8-3-2021 of Hon'ble Supreme Court in *Suo Moto Writ petition No.3 of 2020*.

11. The time limit for filing refund of ITC accumulated due to inverted tax structure is governed under clause (e) of Explanation II to Section 54 of CGST Act, 2017. The clause (e) of Explanation was amended vide Central Goods and Service Tax Amendment Act 2018 with effect from 1-12-2019, which defines the relevant date for filing application for refund of unutilized input tax credit as under :

"(e) in the case of refund of unutilized input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises."

Prior to above substitution clause (e) read as hereunder:

(e) in the case of refund of unutilized input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises

12. Since the claim in this case was filed on 7-11-2020, the relevant date under clause (e) of explanation which existed on the date of filing of claim will be applicable to the subject case. Accordingly the relevant date is to be reckoned as due date of filing of return under Section 39 of CGST Act, 2017, for the period in which such claim of refund arises and accordingly the due date for filing of refund claims is before expiry of two years from the due date of filing of return under Section 39. As per Section 39 of CGST Act, 2017 read with Rule 61 of CGST Rules, 2017, the due date of filing of GSTR3B return is 20th day of succeeding month. Accordingly the due date for filing of refund claim will arise two years from the 20th day of succeeding month of claim period. In this case claim was made for the period from July 2017 to May 2020. Taking into account the due date for filing of GSTR3B return, the relevant date for the period from July 2017 to May 2020 fall on 20th August 2017, 20th September 2017, 20th October 2017 so on and due date for filing of refund claim fall on 19th August 2019, 19th September 2019, 19th October 2019 so on. Accordingly due date for filing of refund application for the period July 2017 to September 2018 falls before the date of filing of claim on 7-11-2020. Hence, I find that the claim for period July 2017 to September 2018 was hit by time limitation factor under Section 54 of CGST 2017 and time barred.

11. In their grounds of appeal the appellant has sought the benefit of Hon'ble Supreme Court's Order dated 8-3-2021 providing extension of time. I find that in the said Order it was ordered that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. This Order was issued referring to previous Order dated 23.03.2020, wherein Hon'ble Supreme Court has extended the period of limitation prescribed under the general law or special laws whether compoundable or not, with effect from 15.03.2020 till further orders. Subsequently vide Order dated 27-4-2021, Hon'ble Supreme Court has restored the Order dated 23-3-2020 thereby directing that the period (s) of limitations as prescribed under any

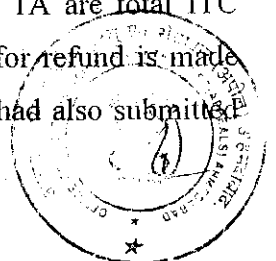
general or special laws in respect of all judicial or quasi judicial proceedings, whether condonable or not, shall stand extended till further orders. In pursuance to said decision, CBIC vide Circular No.157/13/2021-GST dated 20-7-2021 has clarified that Order of Hon'ble Supreme Court granting extension of time is applicable only for filing of any appeal before the appellant authorities and not to any other proceedings including filing of refund claims which will be governed under Section 54 of CGST Act, 2017. Therefore Order dated 8-3-2021 relied by the appellant granting extension of time is not applicable for filing refund claim.

B) Documents as prescribed under Notification NO.40/2017-CT (Rate) dated 23-10-2017 :

12. In compliance to above query the appellant submitted copy of tax invoices and copy of shipping bills before this authority. I have verified the same and find that the appellant has supplied goods to M/s.International Commodities, Ahmedabad on payment of CGST @ 0.05% and SGST @ 0.05% in the month of March 2020 and May 2020 and M/s.International Commodities has exported the goods. I find that Notification No.40/2017 provide exemption for intra-State supply of taxable goods by a registered supplier to a registered recipient for export, from so much of the central tax leviable thereon under section 9 of the said Act, as is in excess of the amount calculated at the rate of 0.05 per cent., subject to fulfillment of conditions. I find that the Notification provides concessional CGST rate for supply of goods for export and hence I could not find any relevance to query raised for submission of documents as per above Notification to the refund claim. Moreover I also notice that the documents which need to be submitted by the appellant under above Notification are also not specified in the show cause notice. Even if any documents as per above Notification is needed it should have been called for by issuing deficiency memo in terms of Rule 90 of CGST Rules, 2017. Therefore I find that this query is irrelevant to the subject issued and hence I do not record any further discussion on this point.

C) Few entries reflecting in Annexure B appears to be misclassified as inputs ; Annexure B appears to be incomplete and there appears difference in ITC mentioned in Annexure B, Statement 1A and RFD 01.

13. Regarding the above query, I reiterate that above queries could have resolved by issue of deficiency memo. However, during appeal the appellant has submitted copy of Annexure B which contains all the required details and as per which the appellant has taken into account the ITC availed on inputs only which comes to Rs.25,60,27,325/-. Regarding difference in ITC shown in Annexure B, Statement 1A and RFD 01, the appellant stated that Annexure B and Statement 1A are total ITC including tax credit of the input service for the period for which the application for refund is made whereas in Form FRD 01 the appellant has considered ITC of inputs only. They had also submitted revised Annexure B as per which the ITC availed on inputs was Rs.25,60,27,325/- .



D) Notification No.49/19 and Notification No.75/2019 are complied or otherwise :

14. In reply to above query, the appellant submitted that they had availed ITC under invoices which are reflected in their GSTR2A returns and that they had not availed ITC by any fraudulent/illegal activities/transaction.

15. I further find that in addition to above compliance the appellant has also claimed interest on refund amount. I find that as per Section 56 of CGST Act, 2017, the payment of interest on delayed sanction of refund arise if the tax ordered to be refunded is not refunded within sixty days from the date of receipt of application and interest at prescribed rate is to be paid from the date after expiry of sixty days from the date of receipt of application till the date of such refund. In the subject case no order was passed yet ordering refund of tax necessitating payment of interest. Further non grant of interest is also not a part of Order appealed against in this appeal. Therefore, at this stage of proceedings I do not intend to make any further discussion on this ground.

16. In view of above discussions in the current proceedings the appellant has given compliance to all the grounds mentioned in the SCN. I hold that claim for the period July 2017 to September 2018 is hit by time limitation and time barred. Therefore, I hold that the appellant is entitled to refund of ITC accumulated on account on inverted duty structure for the period from October 2018 to May 2020 only. Needless to mention that refund will be admissible taking into account ITC availed on inputs on invoices which are reflected in GSTR2A return only and subject to reply given by the appellant to the show cause notice by the sanctioning authority. Accordingly I set aside the impugned order but partially allow the appeal to the above extent.

17. अपीलकर्ता द्वारा दर्ज की गई अपील को कानिपटारा उपरोक्त तरीके से किया जाता है।

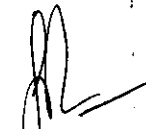
The appeal filed by the appellant stand disposed off in above terms.


(Mithir Rayka)

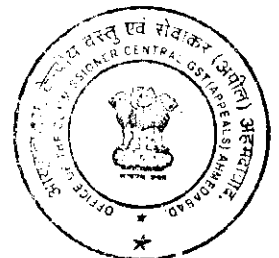
Additional Commissioner (Appeals)

Date :

Attested


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

To,
M/s. Gala Global Products Ltd.,
B1, Laxmi Com Co-Opve Estate,
Ajod Dairy Road, Sukhramnagar
Ahmedabad 380 021



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