



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, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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फाइल संख्या : File No : GAPPL/ADC/GSTP/744 & 746/2021-APPEAL / 6867-22

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-134/2021-22**

दिनांक Date : **04-03-2022** जारी करने की तारीख Date of Issue : **04-03-2022**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

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Arising out of Order-in-Original No. **ZW2403210065259 DT. 04.03.2021 &**

ZQ2403210065315 DT. 04.03.2021 issued by Deputy Commissioner, Division V, Odhav, Ahmedabad South

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

M/s. Rajlaxmi Traders, 3, Adarsh Industrial Estate,

Opp Murlidhar BRTS Bus stop, Odhav, Ahmedabad-382415

(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.Rajlaxmi Traders, 3, Adarsah Industrial Estate, Opp Murlidhar BRTS Bus stop, Odhav, Ahmedabad 382 415 (hereinafter referred to as 'the appellant') has filed two appeals on dated 22-4-2021 against Order No.ZW2403210065259 dated 4-3-2021 and Order No.ZQ2403210065315 dated 4-3-2021 (hereinafter referred to as 'the impugned orders) passed by the Deputy Commissioner, CGST, Division V, Odhav, Ahmedabad South. (hereinafter referred to as 'the adjudicating authority'), rejecting refund claim for Rs.57588/- filed for the period from July 2017 to March 2018 and refund claim for Rs.60,909/- filed for the period from April 2018, respectively.

2. Briefly stated the fact of the case is that the appellant has applied for refund of GST on account of supply in SEZ with payment of IGST during the period July 2017 to March 2018 and April 2018. The adjudicating authority rejected the refund claim on the ground that the application is time barred. Being aggrieved the appellant filed the present appeals on the ground that they had filed refund application on dated 6-2-2020 which was within the time limit of 2years from the end of relevant date ; that they were issued deficiency Memo in GST RFD 03 on dated 5-3-2020 requesting to file fresh refund application after fulfilling the deficiencies mentioned in the Memo. Due to Covid 19 and lockdown from March 2020 the appellant were unable to reply and file new application along with complete information asked for. After lockdown the appellant again filed refund application on dated 26-1-2021. The refund is for sale in SEZ with payment of IGST. The said liability they had raised and paid through GST return for which no amount is receivable from the customer. Also it is not the credit that they can utilize if they don't get refund of it. Hence they urged and requested to allow the refund claimed by them. Therefore the appellant requested reassess their refund application and grant refund.

3. Personal hearing was held on dated 3-3-2022. Shri Nirav Solanki, authorized representative appeared on behalf of the appellant on virtual mode. He was given three working days for submission of additional submission.

4. Accordingly, the appellant via email dated 3-3-2022 given additional submissions wherein they interalia submitted that their original submission of refund application was within time and hence they requested to consider the application in time ; as per Hon'ble Supreme Court's Order dated 27-4-2021 they are eligible to get benefit of relaxation. Accordingly a fresh refund application was done on 26-1-2021 ie before 14-3-2021 and hence the applicable shall be considered as on time or within time ; that the refund is for sale in SEZ with payment of IGST. The said liability they have raised and paid through GST return Form 3B. for which no amount is receivable from the customer. Also it is not the credit that they can utilize if they don't get refund of it. Hence they urged and requested to allow the refund.

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. I find that in this case refund application

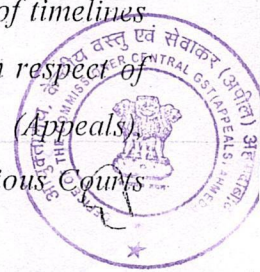


filed by the appellant for refund of IGST paid on supply made to SEZ was rejected due to time limitation factor. As per Section 54 of CGST Act, 2017 the time limit for filing refund is two years from the relevant date. As per explanation 2 to Section 54 the relevant date in respect of supply made to SEZ is the date of payment of tax. In this case claim was made for supply made during the period July 2017 to March 2018 and April 2018. Accordingly as per Section 54 of CGST Act, the due date for filing of claim for each month falls on the 20th day of succeeding month of each month for which claim was filed.

6. In this case the initial application was filed on dated 6-2-2020. Therefore at the time of filing of claim pertaining to the period February 2018 to April 2018 was within the time limit. However the appellant was issued deficiency memo against this application. The appellant filed rectified refund application only on dated 26-1-2021. As per Rule 90 (3) of CGST Rules, 2017 where any deficiencies are noticed and communicated in Form GST RFD 03, the claimant is required to rectify the deficiencies and file fresh claim. Thus as per Rule 90 (3) the rectified application is treated as fresh refund claim. In this regard CBIC vide Circular No. 125/44/2019-GST dated 18-11-2019 has clarified that since the refund claim filed after correction of deficiency is treated as fresh refund application, such a rectified refund application submitted after correction of deficiencies shall also have to be submitted within 2 years of the relevant date as defined in the explanation after sub section (14) of Section 54 of the CGST Act. Therefore for determining the time limit, the date of filing of rectified refund application is to be considered as per which the rectified application filed on 26-1-2021 was filed beyond the time period stipulated under Section 54 of the CGST Act, 2017.

7. In their additional submission the appellant has relied upon the judgment of Hon'ble Supreme Court dated 27-4-2021 extending time limit till 15-3-2021 and contended that the rectified application filed on 26-1-2021 is within the time limit prescribed as per the said judgment ie before 15-3-2021 and requested to consider their application.

8. I have gone through the said judgment and find that as per said Order 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, was extended with effect from 15-3-2020 till further orders. In pursuance to said decision, CBIC vide Circular No.157/13/2021-GST dated 20-7-2021 has also clarified that *appeals by tax payers/tax authorities against any quasi judicial order, whether any appeal is required to be filed before Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various Courts against any quasi judicial order or where a proceedings for revision or rectification of any order is required to be undertaken, the time limit for the same would stand extended as per the Hon'ble Supreme Court's Order. In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27-4-2021 is applicable in respect of any appeal which is required to be filed before Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various Courts*



against any quasi judicial order or where proceedings for revision or rectification of any order is required to be undertaken and is not applicable to any other proceedings under GST Laws.

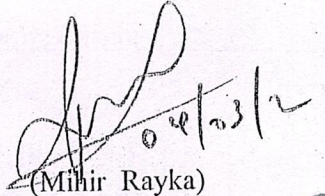
9. In view of Circular above, Order of Hon'ble Supreme Court granting extension of time is applicable only for filing of any appeal before the appellant authorities and not to any other proceedings including filing of refund claims which will be governed under Section 54 of CGST Act, 2017.

10. I further find that since the time limit for filing refund is prescribed by way of statute, it is binding on both the Departmental authorities and the registered person. Therefore, it is a statutory requirement on the part of the registered person to file the refund claim within such prescribed time limit or within the extended period if any provided and on failure to do so this authority is not empowered to condone the same beyond the prescribed time limit. Therefore, I do not accept the submissions made by the appellant in appeal.

11. In view of above, since the rectified refund application was filed by the appellant beyond two years from the relevant date, I find that the claim is hit by time limitation and time barred. Therefore, I do not find any infirmity in the impugned orders passed by the adjudicating authority rejecting refund application on time limitation ground. Accordingly I upheld the order passed by the adjudicating authority and reject the appeals filed by the appellant.

अपील कर्थाद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

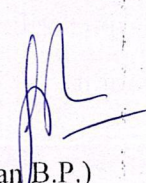
12.. The appeals filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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

By RPAD.

To,
M/s.Rajlaxmi Traders,
3, Adarsah Industrial Estate,
Opp Murlidhar BRTS Bus stop,
Odhav, Ahmedabad 382 415

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 V, Ahmedabad South.
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File

