



सत्यमेव जयते

# आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

07926305065- टेलीफैक्स 07926305136



DIN NO. : 20210964SW000000AC69

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1310/2021/3287 TO 3292

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-24/21-22

दिनांक Date : 16-09-2021 जारी करने की तारीख Date of Issue : 25-09-2021

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No ZA240919075684V all dated 25-09-2019 issued by Superintendent, Range I, Division VII-Satellite, Ahmedabad-South Commissionerate

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

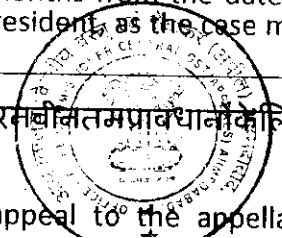
M/s Akshar Infosys [Ms Anita Jaykumar Vala],

(GSTIN: 24ASBPJ5491P1ZA)

A/406, Safal Pegasus, Opp. Venus Atlantis Mall,

Near Prahladnagar Garden, Ahmedabad-380015

(A)	इस आदेश (अपील) सेट गठित 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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 संबंधित मसौदा के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a>



**:: ORDER-IN-APPEAL ::**

Ms. Anita Jaykumar Vala (Legal Name), proprietor of M/s. Akshar Infosys (Trade Name), A/406, Safal Pegasus, Opp. Venus Atlantis Mall, near Prahladnagar Garden, Ahmedabad-380015 (hereinafter referred to as 'Appellant') has filed present appeal against order no. ZA240919075684V dated 25.09.2019 (hereinafter referred to as 'impugned order') passed by the Superintendent, CGST Range-I, Division-VII-Satellite, Commissionerate-Ahmedabad South (hereinafter referred to as 'adjudicating authority').

2. The brief facts of the case are that the appellant was registered under the GST holding registration no. 24ASBPJ5491P1ZA. The registration of the appellant was cancelled vide the impugned order w.e.f. 25.09.2019 under Section 29(2) of the CGST Act, 2017 due to non-filing of GST returns for a continuous period of more than six months.

3. Being aggrieved, the Appellant has preferred the present appeal on following grounds, *inter-alia*, contending:-

- (i) That due to negligence of tax consultant they could not pay GST liability and file returns in due time which led to cancellation of their GST registration.
- (ii) Now, all the pending returns till the month of cancellation have been filed and tax liability, interest and late fee have also been paid.

3.1 Personal hearing in the matter was held on 27.08.2021 through virtual mode. Shri Bhavin V. Gajera, Chartered Accountant, attended the hearing as an authorized representative of the appellant. He reiterated the grounds of appeal memorandum (submitted online on 28.06.2021) as well as the additional submission (submitted on 15.07.2021) and requested to consider the same.

4. I have gone through the records of the case, the impugned order and the grounds of appeal as well as oral submission of the appellant. I find that the impugned order was issued on 25.09.2019 by the adjudicating authority. As submitted by the Appellant, the said order was also communicated to them on the same day of 25.09.2019. It is further observed that the Appellant has filed this present appeal on 28.06.2021 (through online mode) and hard copies manually submitted on 15.07.2021 alongwith additional submission and supporting documents.

4.1 I further find it relevant to go through the statutory provisions of Section 107 of the CGST Act, 2017 which is reproduced herebelow:

"Sec.107. Appeals to Appellate Authority.-(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act



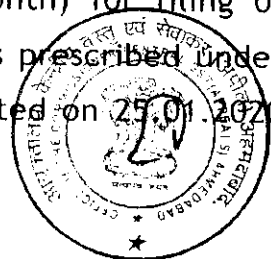
or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month."

4.2 Accordingly, it is observed that the Appellant was required to file appeal within 3 months from the receipt of the said order i.e. on or before 25.12.2019, as stipulated under Section 107(1) of the Act. However, the Appellant has filed the present appeal on 28.06.2021, i.e. after a period of more than one and half year from the due date. Further, I also find that in terms of the provisions of Section 107(4) *ibid*, the appellate authority has powers to condone delay of one month in filing of appeal, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown. Accordingly, I find that there is a delay of one and half year in filing the appeal over and above the normal period of 3 months. Thus, appeal filed beyond the time limit prescribed under Section 107(1) *ibid* cannot be entertained.

4.3 Further, I also find that in terms of the Hon'ble Supreme Court judgment dated 23.03.2020, wherein the Apex Court taking suo-moto cognizance of the situation arising due to COVID-19 pandemic has extended the period of limitation prescribed under the law with effect from 15.03.2020 till further orders. Further, the Hon'ble Supreme Court vide order dated 27.04.2021 has restored the order dated 23<sup>rd</sup> March 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 from 15.03.2020. The CBIC, New Delhi also vide Circular No. 157/13/2021-GST dated 20.07.2021, has clarified at para-5 that "In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 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 proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws."

However, I find in the present case that the period of limitation of total 4 months (including condonable period of 1 month) for filing of appeal from the date of issuance of impugned order, as prescribed under Section 107 of the CGST Act, 2017 was already completed on 25.01.2020



and hence, the present case would not be eligible for the relaxation/extention granted by the Hon'ble Supreme Court in respect of period(s) of limitation as mentioned above. Accordingly, I find that the further proceedings in case of present appeal can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.

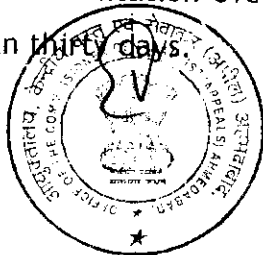
5. It is also observed that the appellant has not filed any application for condonation of delay. Even otherwise, filing of a COD application is not going to change the factual position in the present case. I find that this appellate authority is a creature of the statute and has to act as per the provisions contained in the CGST Act. This appellate authority, therefore, cannot condone delay beyond the period permissible under the CGST Act. When the legislature has intended the appellate authority to entertain the appeal by condoning further delay of only one month, this appellate authority cannot go beyond the power vested by the legislature. My views are supported by the following case laws:

- (i) The Hon'ble Supreme Court in the case of **Singh Enterprises** reported as 2008 (221) E.L.T.163 (S.C.) has held as under:

*"8. ...The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."*

- (ii) In the case of **Makjai Laboratories Pvt Ltd** reported as 2011 (274) E.L.T. 48 (Bom.), the Hon'ble Bombay High Court held that the Commissioner (Appeals) cannot condone delay beyond further period of 30 days from initial period of 60 days and that provisions of Limitation Act, 1963 is not applicable in such cases as Commissioner (Appeals) is not a Court.


- (iii) The Hon'ble High Court of Delhi in the case of **Delta Impex** reported as 2004 (173) E.L.T. 449 (Del) held that the Appellate authority has no jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days.



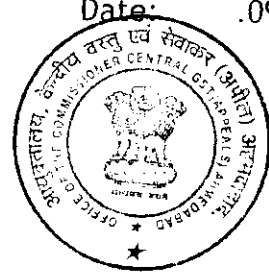
6. I find that the provisions of Section 107 of the Central Goods and Services Act, 2017 are *pari materia* with the provisions of Section 85 of the Finance Act, 1994 and Section 35 of the Central Excise Act, 1944 and hence, the above judgements would be squarely applicable to the present appeal also.

7. By respectfully following the above judgements, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under proviso to Section 107(4) of the Act. Thus, the appeal filed by the appellant is required to be dismissed on the grounds of limitation as not filed within the prescribed time limit in terms of the provisions of Section 107 of the CGST Act, 2017. I, accordingly, dismiss the present appeal.

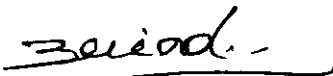
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant are disposed of as above.

  
(Minir Rayka)  
Joint Commissioner  
CGST(Appeals)

Date: .09.2021



Attested

  
(M.P. Sisodiya)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad

By R.P.A.D.

To,  
Ms. Anita Jaykumar Vala (Legal Name),  
Proprietor of M/s Akshar Infosys (Trade Name),  
A/406, Safal Pegasus,  
Opp. Venus Atlantis Mall,  
near Prahladnagar Garden, Ahmedabad-380015

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad
3. The Principal Commissioner, Central GST & C.Ex, Ahmedabad-South.
4. The Deputy/Assistant Commissioner, CGST & C.Ex, Division-VII-Satellite, Commissionerate-Ahmedabad South
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File



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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टेलीफैक्स 07926305136



**DIN-20210964SW0000777DC4**

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1627/2021-APPEAL / 3144 70 3150

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-23/2021-22**

दिनांक Date : **16-09-2021** जारी करने की तारीख Date of Issue : **20-09-2021**

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **ZA2412190663320** दिनांक: **19.12.2019** issued by Superintendent, CGST, Range-III, Division-I-Rakhial, Ahmedabad South

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

**Shri Shailendrasingh Devrajsingh Parihar (Legal Name)**

**M/s. Shiv Shanker Sales (Trade Name)**

**Amul Parlour, Amraiwadi Police Lines, Amraiwadi, Ahmedabad-380026**

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



## ORDER-IN-APPEAL

Shri Shailendrasingh Devrajsingh Parihar (Trade Name: M/s. Shiv Shanker Sales), Amul Parlour, Amraiwadi Police Lines, Amraiwadi, Ahmedabad-380026 (hereinafter referred to as '**appellant**') has filed present appeal against Order bearing reference No. ZA2412190663320 dated 19.12.2019 for cancellation of Registration (hereinafter referred to as '**impugned order**'), issued by Superintendent, Range-III, Division-I-Rakhial, Commissionerate-Ahmedabad South (hereinafter referred to as '**adjudicating authority**').

2. The brief facts of the case are that the appellant was registered under GST having registration number 24BUBPP7568Q1ZR. They were issued with a show cause notice dated 11.12.2019 asking as to why their registration should not be cancelled for not filing returns for a continuous period of six months. Subsequently, vide the impugned order, their GST Registration was cancelled w.e.f. 19.12.2019 under Section 29(2) of the CGST Act, 2017, stating reason that "*as per Sec 29 (2) of the CGST Act, 2017 instruction no. 01/18-19 dated 11/12/2018 registration of a person has not furnished returns for a continuous period of six months or 3 consecutive tax period as the case his registration canceled. Please file within stipulated time GSTR-10.*"

3. Being aggrieved, the appellant filed the present appeal against the impugned order submitting that they have filed all GSTR upto December, 2019 and that due to health reason and Covid condition, he has not been able to file revocation of cancellation in time limit and has requested to consider revocation of their registration.

4. Personal hearing in the matter was held on 27.08.2021 through virtual mode. Shri Rajiv Yadav, Chartered Accountant, attended the hearing as authorized representative on behalf of the appellant. He reiterated the grounds of appeal memorandum and requested to consider the same.

5. I have gone through the records of the case, the impugned order, and the grounds of appeal as well as oral submission of the appellant. I find that the main issue to be decided in the instant case are (i) whether the appeal has been filed within the prescribed time- limit and (ii) whether the appeal filed against the order of cancellation of registration can be considered and eligible for revocation by the proper officer.

6. Accordingly, first I take up the issue of filing the appeal within the prescribed time limit and it is imperative that the statutory provisions be gone through, which are reproduced, below:

**SECTION 107. Appeals to Appellate Authority.** — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or



the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) .....

(3) .....

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a **further period of one month.**

6.1. I observed that in the instant case the appeal has been filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. I find that though the delay in filing the appeal is condonable only for a further period of one month provided that the appellant was prevented by sufficient cause from presenting the appeal is shown and the delay of more than one month is not condonable under the provisions of sub section (4) of Section 107 of the Central Goods and Service Tax Act, 2017.

6.2 In the above context, I find that in terms of the Hon'ble Supreme Court judgment dated 23.03.2020, wherein the Apex Court taking suomotu cognizance of the situation arising due to COVID-19 pandemic has extended the period of limitation prescribed under the law with effect from 15.03.2020 till further orders. Further, the Hon'ble Supreme Court vide order dated 27.04.2021 has restored the order dated 23<sup>rd</sup> March 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 from 15.03.2020.

6.3 Further, I also find that the CBIC, New Delhi has issued clarification vide Circular No. 157/13/2021-GST dated 20.07.2021 as under:-

*"4. On the basis of the legal opinion, it is hereby clarified that various actions/compliances under GST can be broadly categorised as follows: -*

(a) .....

(b) .....

(c) Appeals by taxpayers/ tax authorities against any quasi- judicial order:-  
Wherever any appeal is required to 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 proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

5. In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 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 proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws."

In view of above, I am inclined to condone the delay of filing of appeal in the present case and proceed to decide the case on merits.

7. Now, as regards the merits of the present appeal, I find that the provisions for revocation of cancellation of registration where the same is cancelled by the proper officer on his own motion are contained in Section 30 of the CGST Act and Rule 23 of the CGST Rules, 2017. Therefore, I find it pertinent to refer Section 30 and Rule 23 as under;

**Section 30: Revocation of cancellation of registration.**

(1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

(\*) [Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).]

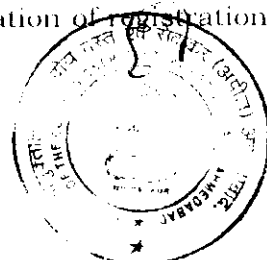
(\*) *Substituted for the proviso – ["Provided that the registered person who was served notice under sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and who could not reply to the said notice, thereby resulting in cancellation of his registration certificate and is hence unable to file application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act, against such order passed up to 31.03.2019, shall be allowed to file application for revocation of cancellation of the registration not later than 22.07.2019] (which was Inserted vide Order No. 05/2019-GST dated 23.04.2020)] by The Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 01st January, 2021.*

(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

**RULE 23. Revocation of cancellation of registration :-**



(1) A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in FORM GST REG-21, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation of registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.

Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration:

Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration.

(2) (a) Where the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in FORM GST REG-22 within a period of thirty days from the date of the receipt of the application and communicate the same to the applicant.

(b) The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in FORM GST REG-05, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

(3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in FORM GST REG-23 requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the reply within a period of seven working days from the date of the service of the notice in FORM-GST-REG-24.

(4) Upon receipt of the information or clarification in FORM GST REG-24, the proper officer shall proceed to dispose of the application in the manner specified in sub-rule (2) within a period of thirty days from the date of the receipt of such information or clarification from the applicant.

7.1 In terms of the provisions of the Section 30 of CGST Act, 2017, I find that the appellant may file an application for revocation of cancellation of registration before the proper officer subject to fulfillment of certain conditions. I also find that the Appellant himself had admitted that he had not filed any such application for revocation of cancellation registration before the proper officer. The Appellant had submitted that



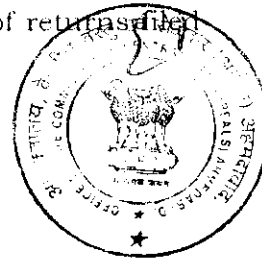
due to health and Covid pandemic situation, he could not apply for revocation. It is observed that the appellant had skipped intermediate remedy of revocation of cancellation of registration and the time limit for availing such remedy is also over. I take note of the fact that when time for applying for revocation of cancellation of registration is over, the Appellant is left with no other option but to prefer an appeal against the impugned order before the Appellate Authority. It is pertinent to observe that the tax payers, whose registration were cancelled and could not file any application for revocation of cancellation within the time limit of 90 days prescribed for the same, who had approached the GST Help Desk in this regard, has been advised to file appeal against the cancellation order. Further, as per Section 107(1) of the CGST Act any aggrieved person by any decision or order passed under the CGST Act by an adjudicating authority may appeal to the Appellate Authority within stipulated period of three months.

7.2. On perusal of Rule 23(1) read with the first proviso to the said rule, I find that any application for revocation of cancellation of registration where registration has been cancelled for the failure of the registered person to furnish such returns, is to be filed only after such returns (upto the effective date of cancellation of registration) are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns. In the present case, I find that appellant has submitted that they have already filed returns upto tax period December-2019 i.e. upto effective date of cancellation as 19.12.2019. Further, I also find that the third proviso to Rule 23(1) of the CGST Rules, 2017 also mandates as below:

*"Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration:"*

7.3 Further, I also find that no other allegation or charges framed against the Appellant except non-filing of returns for which his registration is cancelled. In the present case, I find that the appellant has now filed returns upto date of cancellation of registration and accordingly substantially complied with the above said provisions. Therefore, I am of the opinion that the cancellation of registration of appellant may be considered for revocation by the proper officer subject to due compliance of the conditions by the appellant under Rule 23(1) of CGST Rules, 2017.

7.4 The appellant is impressed upon to furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration. Needless to say, payment particulars (including tax liability, interest, penalty & late fee etc.) and the status of returns filed



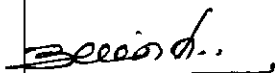
may be verified by the concerned authority having power to revoke the cancelled registration. Thus, the appeal filed by the appellant is allowed in above terms.

8. In view of the above, I allow the appeal of the appellant and order the proper officer to consider the request of the appellant for revocation of the cancellation of registration, after due verification of the returns stated as submitted as mentioned in the foregoing paras and the payment particulars of pending dues towards tax, penalty, late fee, interest etc.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Attested



(M.P. Sisodiya)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad

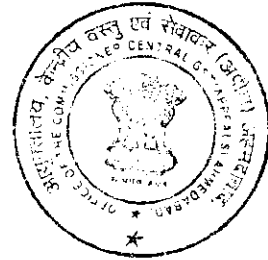
By R.P.A.D.

To,  
Shri Shailendrasingh Devrajsingh Parihar  
(Trade Name: M/s. Shiv Shanker Sales),  
Amul Parlour, Amraiwadi Police Lines,  
Amraiwadi, Ahmedabad-380026

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad
3. The Principal Commissioner, Central GST & C.Ex, Ahmedabad-South.
4. The Superintendent, CGST & C.Ex, Range-III, Division-I-Rakhial, Ahmedabad-South
5. The Assistant Commissioner, CGST & C.Ex, Division-I-Rakhial, Ahmedabad-South
6. The Additional Commissioner, Central Tax (System), Gandhinagar.
- 2-7. Guard File.
8. P.A. File

  
(Mihir Rayka)  
Joint Commissioner (Appeals)  
Date: 09.2021





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 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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टेलिफैक्स 07926305136



**DIN-20210964SW0000818668**

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1262/2021-APPEAL / 3138 70 3143

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

दिनांक Date : **16-09-2021** जारी करने की तारीख Date of Issue : **20-09-2021**

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **ZA240919057948N** दिनांक: **20.09.2019** issued by Superintendent, CGST, Range-III, Division-V-Odhav, Ahmedabad South

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

**M/s. Maruti Stainless Private Limited**

**22-A, Gopal Industrial Estate, Odhav Road, 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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



:: ORDER-IN-APPEAL ::

M/s. Maruti Stainless Private Limited, 22-A, Gopal Industrial Estate, Odhav Road, Ahmedabad-382415 (hereinafter referred to as 'Appellant') has filed present appeal against order no. ZA240919057948N dated 20.09.2019 (hereinafter referred to as 'impugned order') passed by the Superintendent, CGST Range-III, Division-V-Odhav, Commissionerate-Ahmedabad South (hereinafter referred to as 'adjudicating authority').

2. The brief facts of the case are that the appellant was registered under the GST holding registration no. 24AALCS8410J1Z6. The registration of the appellant was cancelled vide the impugned order w.e.f. 20.09.2019 under Section 29(2) of the CGST Act, 2017 showing reason that "*Taxpayer has not filed any return- GSTR-3B since registration. Effective dated of cancellation of registration from 01.07.2017.*"

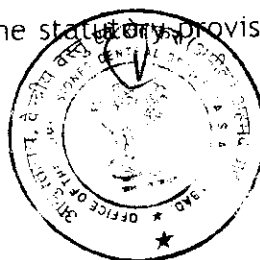
3. Being aggrieved, the Appellant has preferred the present appeal on following grounds, *inter-alia*, contending:-

- (i) That due to some financial problem, they could not file returns from July-17. The delay in filing of GST returns is due to financial problem only and thus they requested to give relief in this matter.
- (ii) Now, they want to file all such pending GST returns with applicable tax & late fees. So they requested to restore their GSTN in the interest of law and justice so that they can file all such pending returns online.
- (iii) They also made an application for condonation of delay stating that due to inadequate knowledge of GST, the inordinate delay in filing appeal is done at their end. They requested to condone the delay in filing of this appeal.

3.1 Personal hearing in the matter was held on 27.08.2021 through virtual mode. Shri Vipul Khandhar, Chartered Accountant, attended the hearing as an authorized representative of the appellant. He reiterated the grounds of appeal memorandum and requested to condone the delay and consider the appeal.

4. I have gone through the records of the case, the impugned order and the grounds of appeal as well as oral submission of the appellant. I find that the impugned order was issued on 20.09.2019 by the adjudicating authority. As submitted by the Appellant, the said order was also communicated to them on the same day of 20.09.2019. It is further observed that the Appellant has filed this present appeal on 09.07.2021.

4.1 I further find it relevant to go through the statutory provisions of Section



107 of the CGST Act, 2017 which is reproduced herebelow:

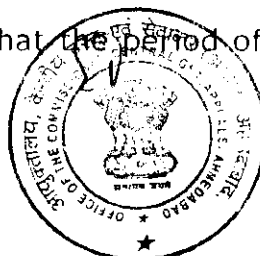
*"Sec.107. Appeals to Appellate Authority.—(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.*

*(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month."*

4.2 Accordingly, it is observed that the Appellant was required to file appeal within 3 months from the receipt of the said order i.e. on or before 20.12.2019, as stipulated under Section 107(1) of the Act. However, the Appellant has filed the present appeal on 09.07.2021, i.e. after a period of more than one and half year from the due date. Further, I also find that in terms of the provisions of Section 107(4) *ibid*, the appellate authority has powers to condone delay of one month in filing of appeal, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown. Accordingly, I find that there is a delay of one and half year in filing the appeal over and above the normal period of 3 months. Thus, appeal filed beyond the time limit prescribed under Section 107(1) *ibid* cannot be entertained.

4.3 Further, I also find that in terms of the Hon'ble Supreme Court judgment dated 23.03.2020, wherein the Apex Court taking suo-moto cognizance of the situation arising due to COVID-19 pandemic has extended the period of limitation prescribed under the law with effect from 15.03.2020 till further orders. Further, the Hon'ble Supreme Court vide order dated 27.04.2021 has restored the order dated 23<sup>rd</sup> March 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 from 15.03.2020. The CBIC, New Delhi also vide Circular No. 157/13/2021-GST dated 20.07.2021, has clarified at para-5 that *"In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 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 proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws."*

However, I find in the present case that the period of limitation of



total 4 months (including condonable period of 1 month) for filing of appeal from the date of issuance of impugned order, as prescribed under Section 107 of the CGST Act, 2017 was already completed on 20.01.2020 and hence, the present case would not be eligible for the relaxation/extension granted by the Hon'ble Supreme Court in respect of period(s) of limitation as mentioned above. Accordingly, I find that the further proceedings in case of present appeal can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.

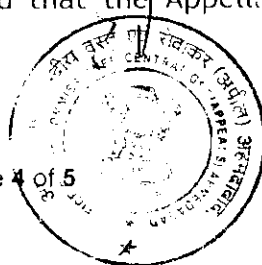
5. It is also observed that the appellant has filed an application for condonation of delay. However, filing of a COD application is not going to change the factual position in the present case. I find that this appellate authority is a creature of the statute and has to act as per the provisions contained in the CGST Act. This appellate authority, therefore, cannot condone delay beyond the period permissible under the CGST Act. When the legislature has intended the appellate authority to entertain the appeal by condoning further delay of only one month, this appellate authority cannot go beyond the power vested by the legislature. My views are supported by the following case laws:

- (i) The Hon'ble Supreme Court in the case of **Singh Enterprises** reported as 2008 (221) E.L.T.163 (S.C.) has held as under:

*"8. ...The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."*

- (ii) In the case of **Makjai Laboratories Pvt Ltd** reported as 2011 (274) E.L.T. 48 (Bom.), the Hon'ble Bombay High Court held that the Commissioner (Appeals) cannot condone delay beyond further period of 30 days from initial period of 60 days and that provisions of Limitation Act, 1963 is not applicable in such cases as Commissioner (Appeals) is not a Court.

- (iii) The Hon'ble High Court of Delhi in the case of **Delta Impex** reported as 2004 (173) E.L.T. 449 (Del) held that the Appellate authority has no






jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days.

6. I find that the provisions of Section 107 of the Central Goods and Services Act, 2017 are *pari materia* with the provisions of Section 85 of the Finance Act, 1994 and Section 35 of the Central Excise Act, 1944 and hence, the above judgements would be squarely applicable to the present appeal also.

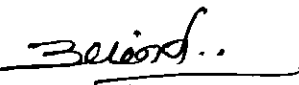
7. By respectfully following the above judgements, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under proviso to Section 107(4) of the Act. Thus, the appeal filed by the appellant is required to be dismissed on the grounds of limitation as not filed within the prescribed time limit in terms of the provisions of Section 107 of the CGST Act, 2017. I, accordingly, dismiss the present appeal.

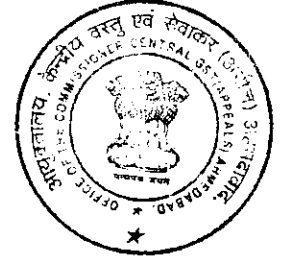
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant are disposed of as above.

  
(Mihir Rayka)  
Joint Commissioner  
CGST(Appeals)

Date: .09.2021

Attested

  
(M.P. Sisodiya)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad



By R.P.A.D.

To,  
M/s. Maruti Stainless Private Limited,  
22-A, Gopal Industrial Estate,  
Odhav Road, Ahmedabad-382415

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad
3. The Principal Commissioner, Central GST & C.Ex, Ahmedabad-South.
4. The Deputy/Assistant Commissioner, CGST & C.Ex, Division-V-Odhav, Commissionerate-Ahmedabad South
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. ~~Guard File.~~
7. P.A. File



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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**DIN-20210964SW000000F9B4**

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1435/2021-APPEAL / 3132 T = 3137

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-21/2021-22**

दिनांक Date : **16-09-2021** जारी करने की तारीख Date of Issue : **20-09-2021**

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **ZA240919002370R** दिनांक: **03.09.2019** issued by Superintendent Ghatak-18, Range-IV, Division-IV-Narol, Ahmedabad South

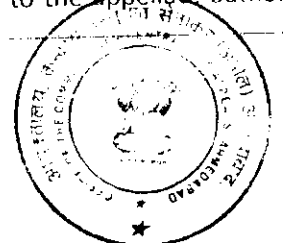
घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Honey Jadishbhai Prajapati (Legal name) M/s HP Distributor (Trade Name)**

**206, SAMRUDDHI RESIDENCY, B/H VASANT VIHAR SOCIETY, NAROL**

**ASLALI HIGHWAY, AHMEDABAD-382405**

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



:: ORDER-IN-APPEAL ::

Honey Jagdishbhai Prajapati (Legal Name) having Trade Name as 'HP Distributor', 206, Samruddhi Residency, B/H Vasant Vihar Society, Narol-Aslali Highway, Ahmedabad-382405 (hereinafter referred to as 'Appellant') has filed present appeal against order no. ZA240919002370R dated 03.09.2019 (hereinafter referred to as 'impugned order') passed by the Superintendent, CGST Range-IV, Division-IV-Narol, Commissionerate-Ahmedabad South (hereinafter referred to as 'adjudicating authority').

2. The brief facts of the case are that the appellant was registered under the GST holding registration no. 24APVPP1011N1ZM. The registration of the appellant was cancelled vide the impugned order w.e.f. 03.09.2019 under Section 29(2) of the CGST Act, 2017 due to non-filing of GST returns for a continuous period of 14 months.

3. Being aggrieved, the Appellant has preferred the present appeal on following grounds, *inter-alia*, contending:-

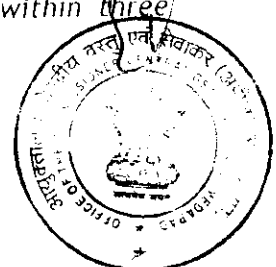
- (i) That due to family problems, the appellant was disturbed and could not focus properly on time.
- (ii) There was very unfortunate incident happened in the family and they were completely disturbed.

3.1 Personal hearing in the matter was held on 27.08.2021 through virtual mode. Shri Saiyed Iftekharahmed, Advocate & Tax Practitioner, attended the hearing as an authorized representative of the appellant. He reiterated the grounds of appeal memorandum submitted on 27/28.07.2021 and requested to consider the same.

4. I have gone through the records of the case, the impugned order and the grounds of appeal as well as oral submission of the appellant. I find that the impugned order was issued on 03.09.2019 by the adjudicating authority. As submitted by the Appellant, the said order was also communicated to them on the same day of 03.09.2019. It is further observed that the Appellant has filed this present appeal on 27.07.2021 (through online mode) and hard copies manually submitted on 28.07.2021 alongwith supporting documents.

4.1 I further find it relevant to go through the statutory provisions of Section 107 of the CGST Act, 2017 which is reproduced herebelow:

*"Sec.107. Appeals to Appellate Authority.--(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three*



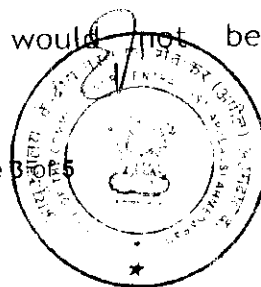
months from the date on which the said decision or order is communicated to such person.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month."

4.2 Accordingly, it is observed that the Appellant was required to file appeal within 3 months from the receipt of the said order i.e. on or before 03.12.2019, as stipulated under Section 107(1) of the Act. However, the Appellant has filed the present appeal on 27/28.07.2021, i.e. after a period of more than one and half year from the due date. Further, I also find that in terms of the provisions of Section 107(4) *ibid*, the appellate authority has powers to condone delay of one month in filing of appeal, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown. Accordingly, I find that there is a delay of one and half year in filing the appeal over and above the normal period of 3 months. Thus, appeal filed beyond the time limit prescribed under Section 107(1) *ibid* cannot be entertained.

4.3 Further, I also find that in terms of the Hon'ble Supreme Court judgment dated 23.03.2020, wherein the Apex Court taking suo-moto cognizance of the situation arising due to COVID-19 pandemic has extended the period of limitation prescribed under the law with effect from 15.03.2020 till further orders. Further, the Hon'ble Supreme Court vide order dated 27.04.2021 has restored the order dated 23<sup>rd</sup> March 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 from 15.03.2020. The CBIC, New Delhi also vide Circular No. 157/13/2021-GST dated 20.07.2021, has clarified at para-5 that "In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 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 proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws."

However, I find in the present case that the period of limitation of total 4 months (including condonable period of 1 month) for filing of appeal from the date of issuance of impugned order, as prescribed under Section 107 of the CGST Act, 2017 was already completed on 03.01.2020 and hence, the present case would not be eligible for the



relaxation/extention granted by the Hon'ble Supreme Court in respect of period(s) of limitation as mentioned above. Accordingly, I find that the further proceedings in case of present appeal can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.

5. It is also observed that the appellant has not filed any application for condonation of delay. Even otherwise, filing of a COD application is not going to change the factual position in the present case. I find that this appellate authority is a creature of the statute and has to act as per the provisions contained in the CGST Act. This appellate authority, therefore, cannot condone delay beyond the period permissible under the CGST Act. When the legislature has intended the appellate authority to entertain the appeal by condoning further delay of only one month, this appellate authority cannot go beyond the power vested by the legislature. My views are supported by the following case laws:

- (i) The Hon'ble Supreme Court in the case of **Singh Enterprises** reported as 2008 (221) E.L.T.163 (S.C.) has held as under:  
*"8. ...The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."*
- (ii) In the case of **Makjai Laboratories Pvt Ltd** reported as 2011 (274) E.L.T. 48 (Bom.), the Hon'ble Bombay High Court held that the Commissioner (Appeals) cannot condone delay beyond further period of 30 days from initial period of 60 days and that provisions of Limitation Act, 1963 is not applicable in such cases as Commissioner (Appeals) is not a Court.
- (iii) The Hon'ble High Court of Delhi in the case of **Delta Impex** reported as 2004 (173) E.L.T. 449 (Del) held that the Appellate authority has no jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days.



6. I find that the provisions of Section 107 of the Central Goods and Services Act, 2017 are *pari materia* with the provisions of Section 85 of the Finance Act, 1994 and Section 35 of the Central Excise Act, 1944 and hence, the above judgements would be squarely applicable to the present appeal also.

7. By respectfully following the above judgements, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under proviso to Section 107(4) of the Act. Thus, the appeal filed by the appellant is required to be dismissed on the grounds of limitation as not filed within the prescribed time limit in terms of the provisions of Section 107 of the CGST Act, 2017. I, accordingly, dismiss the present appeal.

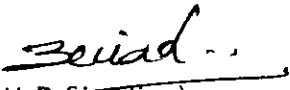
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

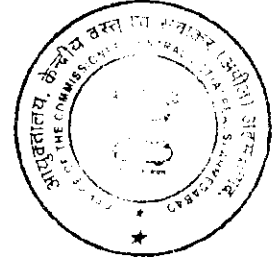
The appeal filed by the appellant are disposed of as above.

  
(Mihir Rayka)  
Joint Commissioner  
CGST(Appeals)

Date: .09.2021

Attested

  
(M.P. Sisodiya)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad

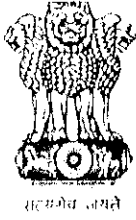


By R.P.A.D.

To,  
Honey Jagdishbhai Prajapati (Legal Name)  
[Trade Name as 'HP Distributor'],  
206, Samruddhi Residency,  
B/H Vasant Vihar Society,  
Narol-Aslali Highway, Ahmedabad-382405

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad
3. The Principal Commissioner, Central GST & C.Ex, Ahmedabad-South.
4. The Deputy/Assistant Commissioner, CGST & C.Ex, Division-IV-Narol, Commissionerate-Ahmedabad South
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. ~~Guard File.~~
7. P.A. File



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, अम्बावादी अहमदाबाद 380015

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



07926305065-

टेलीफैक्स 07926305136



DIN-20210964SW000002070C

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1278/2021 APPEAL / 3063 76 3068

य अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-20/2021-22

दिनांक Date : 17-09-2021 जारी करने की तारीख Date of Issue : 20-09-2021

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

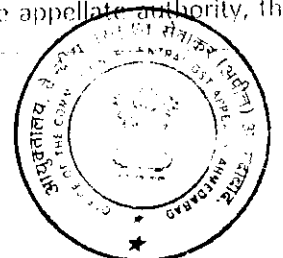
Passed by Shri. Mihir Rayka, Joint Commissioner (Appeals)

य Arising out of Order-in-Original No ZA240919066707W दिनांक: 23.09.2019 issued by  
Superintendent, CGST, Range-1, Division-VIII-Vejalpur, Ahmedabad South

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

M/s. Shree Ganesh Allied Services Private Limited, 5, Hans Residency, B/H  
Venus Atlantis Mall, Opp. Prahladnagar Garden, Ahmedabad-380015

- (A) इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नालिखित 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](http://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](http://www.cbic.gov.in)



**:: ORDER-IN-APPEAL ::**

M/s. Shree Ganesh Allied Services Private Limited, 5, Hans Residency, B/H Venus Atlantis Mall, Opp. Prahladnagar Garden, Ahmedabad-380015 (hereinafter referred to as 'Appellant') has filed present appeal against order no. ZA240919066707W dated 23.09.2019 (hereinafter referred to as 'impugned order') passed by the Superintendent, CGST Range-I, Division-VIII-Vejalpur, Commissionerate-Ahmedabad South (hereinafter referred to as 'adjudicating authority').

2. The brief facts of the case are that the appellant was registered under the GST holding registration no. 24AAVC53841F2Z3. The registration of the appellant was Suo-moto cancelled vide the impugned order w.e.f. 23.09.2019 under Section 29(2) of the CGST Act, 2017 due to non-filing of GST returns for a continuous period of more than six months.

3. Being aggrieved, the Appellant has preferred the present appeal on following grounds, *inter-alia*, contending:

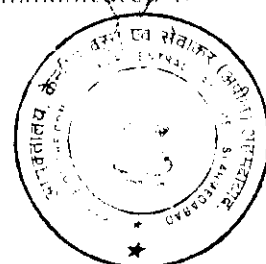
- (i) That due to unfortunate circumstances they could not pay GST liability and file returns in due time which led to cancellation of their GST registration.
- (ii) Now, all the pending returns till the month of cancellation have been filed and tax liability, interest and late fee have also been paid.

3.1 Personal hearing in the matter was held on 27.08.2021 through virtual mode. Shri Dheeraj Varndani, Company Secretary, attended the hearing as an authorized representative of the appellant. He reiterated the grounds of appeal memorandum and requested to consider the same.

4. I have gone through the records of the case, the impugned order and the grounds of appeal as well as oral submission of the appellant. I find that the impugned order was issued on 23.09.2019 by the adjudicating authority. As submitted by the Appellant, the said order was also communicated to them on the same day of 23.09.2019. It is further observed that the Appellant has filed this present appeal on 02.07.2021.

4.1 I further find it relevant to go through the statutory provisions of Section 107 of the CGST Act, 2017 which is reproduced herebelow:

*"Sec.107. Appeals to Appellate Authority. (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.*



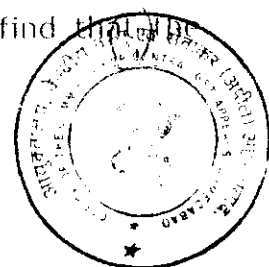


*(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month."*

4.2 Accordingly, it is observed that the Appellant was required to file appeal within 3 months from the receipt of the said order i.e. on or before 23.12.2019, as stipulated under Section 107(1) of the Act. However, the Appellant has filed the present appeal on 02.07.2021, i.e. after a period of more than one and half year from the due date. Further, I also find that in terms of the provisions of Section 107(4) *ibid*, the appellate authority has powers to condone delay of one month in filing of appeal, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown. Accordingly, I find that there is a delay of one and half year in filing the appeal over and above the normal period of 3 months. Thus, appeal filed beyond the time limit prescribed under Section 107(1) *ibid* cannot be entertained.

4.3 Further, I also find that in terms of the Hon'ble Supreme Court judgment dated 23.03.2020, wherein the Apex Court taking suo-moto cognizance of the situation arising due to COVID-19 pandemic has extended the period of limitation prescribed under the law with effect from 15.03.2020 till further orders. Further, the Hon'ble Supreme Court vide order dated 27.04.2021 has restored the order dated 23<sup>rd</sup> March 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 from 15.03.2020. The CBIC, New Delhi also vide Circular No. 157/13/2021-GST dated 20.07.2021, has clarified at para-5 that "*In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 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 proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws.*"

However, I find in the present case that the period of limitation of total 4 months (including condonable period of 1 month) for filing of appeal from the date of issuance of impugned order, as prescribed under Section 107 of the CGST Act, 2017 was already completed on 23.01.2020 and hence, the present case would not be eligible for the relaxation/extension granted by the Hon'ble Supreme Court in respect of period(s) of limitation as mentioned above. Accordingly, I find that the



further proceedings in case of present appeal can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.

5. It is also observed that the appellant has not filed any application for condonation of delay. Even otherwise, filing of a COD application is not going to change the factual position in the present case. I find that this appellate authority is a creature of the statute and has to act as per the provisions contained in the CGST Act. This appellate authority, therefore, cannot condone delay beyond the period permissible under the CGST Act. When the legislature has intended the appellate authority to entertain the appeal by condoning further delay of only one month, this appellate authority cannot go beyond the power vested by the legislature. My views are supported by the following case laws:

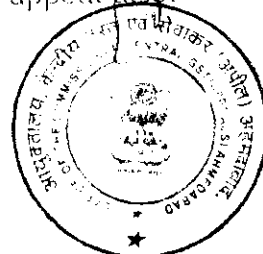
- (i) The Hon'ble Supreme Court in the case of **Singh Enterprises** reported as 2008 (221) E.L.T.163 (S.C.) has held as under:

*"8. ...The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."*

- (ii) In the case of **Makjai Laboratories Pvt Ltd** reported as 2011 (274) E.L.T. 48 (Bom.), the Hon'ble Bombay High Court held that the Commissioner (Appeals) cannot condone delay beyond further period of 30 days from initial period of 60 days and that provisions of Limitation Act, 1963 is not applicable in such cases as Commissioner (Appeals) is not a Court.


- (iii) The Hon'ble High Court of Delhi in the case of **Delta Impex** reported as 2004 (173) E.L.T. 449 (Del) held that the Appellate authority has no jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days.

6. I find that the provisions of Section 107 of the Central Goods and Services Act, 2017 are *pari materia* with the provisions of Section 85 of the Finance Act, 1994 and Section 35 of the Central Excise Act, 1944 and hence, the above judgements would be squarely applicable to the present appeal also.



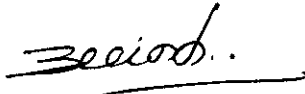
7. By respectfully following the above judgements, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under proviso to Section 107(4) of the Act. Thus, the appeal filed by the appellant is required to be dismissed on the grounds of limitation as not filed within the prescribed time limit in terms of the provisions of Section 107 of the CGST Act, 2017. I, accordingly, dismiss the present appeal.

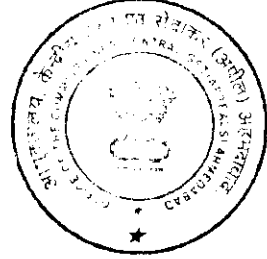
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant are disposed of as above.

  
(Mihir Rayka)  
Joint Commissioner  
CGST(Appeals)

Date: .09.2021

Attested

  
(M.P. Sisodiya)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad



By R.P.A.D.

To,  
M/s. Shree Ganesh Allied Services Private Limited,  
5, Hans Residency,  
B/H Venus Atlantis Mall,  
Opp. Prahladnagar Garden,  
Ahmedabad-380015

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad
3. The Principal Commissioner, Central GST & C.Ex, Ahmedabad-South.
4. The Deputy/Assistant Commissioner, CGST & C.Ex, Division-VIII-Vejalpur, Commissionerate-Ahmedabad South
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. ☒ Guard File.
7. P.A. File



**आयुक्त(अपील) का कार्यालय,**  
**Office of the Commissioner (Appeal),**  
**केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद**  
**Central GST, Appeal Commissionerate, Ahmedabad**  
 जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
 07926305065- टेलीफैक्स 07926305136



DIN NO. : 20210764SW0000222B92

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1118&1119/2021-Appeal / 2358 TC 2363

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-18 & 19/21-22  
 दिनांक Date : 26-07-2021 जारी करने की तारीख Date of Issue : 29-07-2021

श्री मोहित अग्रवाल अपर आयुक्त (अपील) द्वारा पारित  
 Passed by Shri Mohit Agrawal, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No ZR2403210379648 dated 26/03/2021 and Order No. ZR2403210429093 dated 30/03/2021 both issued by Deputy Commissioner, Central GST, Division-IV-Narol, Ahmedabad-South Commissionerate

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**M/s. Venus Denim**  
 (GSTN:24AAMFV4350N1ZP),  
 181, Shahwadi, B/h MG Mill,  
 Narol, Ahmedabad-382405

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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.



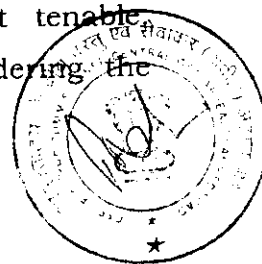
**ORDER IN APPEAL**

M/s. Venus Denim (GSTN:24AAMFV4350N1ZP), 181, Shahwadi, B/h MG Mill, Narol, Ahmedabad-382405 (*hereinafter referred to as 'appellant'*) filed the present appeal against the Order No. ZR2403210379648 dated 26/03/2021 and Order No. ZR2403210429093 dated 30/03/2021 (*hereinafter referred to as 'impugned orders'*) passed by the Deputy Commissioner, Central GST, Div-IV-Narol, Ahmedabad-South (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellant filed refund claims amounting to Rs. 10,16,376/- & Rs. 9,16,179/- for the month of November-2020 & December-2020 respectively under Section 54 of the CGST Act, 2017 on account of ITC on Export of Goods & Services without payment of tax. On scrutiny of refund application submitted by the appellant, the adjudicating authority has issued a notice for rejection of application of refund in FORM-GST-RFD-08 both dated 17/03/2021 reason being "*Miss Match of ITC*" with remark "*ITC availed is more than ITC available in GSTR 2A*" and directed to the appellant to furnish a reply to notice *ibid* within fifteen days from the date of service of this notices. Further, the adjudicating authority has rejected both the refund claims vide impugned orders with the remark-"*reply to SCN not made/not visible*". Since the issue involved is identical for different periods, therefore, both appeals are taken up for decision vide this common order.

3. Being aggrieved with the impugned orders, the appellant preferred both the appeals on the following grounds:

- a. Refund order is bad in law since it does not contained any section under which the refund application is rejected;
- b. Refund application rejected without considering the details of GSTR-2A as available on GST Portal.
- c. Refund application rejected without considering the reply to SCN.
- d. RFD-06 was issued within 5 days of issuance of SCN. However to comply with the SCN your appellant was offered 15 days time limit which was supposed to be expired on 01/04/2021. RFD-06 was issued soon after the submission of reply to SCN in form RFD-09 dated 23/03/2021. This makes it very clear that the adjudicating authority could locate that the reply to SCN was made but could find the attachment to the reply to SCN. Therefore the reason provided in the rejection order "*reply to SCN not made*" is not tenable. Adjudicating authority has grossly erred in not considering the documents at all.



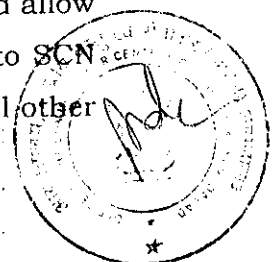
4. A personal hearing in the matter was held on 20.07.2021. Shri Kunal Agrawal, CA appeared before me for personal hearing on dated 20.07.2021 on behalf of appellant through video conferencing mode in appeal no. GAPPL/ADC/GSTP/1118&1119/2021-Appeal. He re-iterated submission made in appeal memorandum and requested to consider their appeal.

5. I have carefully gone through the case records, and written submission made in the appeal memo as well as oral submissions made at the time of personal hearing and impugned order. Accordingly, I proceed to decide the case.

6. Prima facie, I find that the appellant had filed aforesaid refund claim under Section 54 of CGST Act, 2017 on account of ITC on Export of Goods & Services without payment of tax for the month of November-2020 & December-2020. I find that the adjudicating authority has rejected refund claim on the basis that the reply to SCN not made/not visible. Further, I find that the appellant has mentioned in grounds of appeal that the reply to SCN was submitted on 23/03/2021. I also find that the appellant has submitted copy of RFD-09 before me in which reply date is mentioned as 23/03/2021. Further I find that the adjudicating authority has rejected refund application within 10 days of issuance of SCN. Therefore, I find that the reason provided in the rejection order "reply to SCN not made" is not tenable. Further, I find that the appellant has also submitted Form GSTR-3B for the month of November-2020 & December-2020 in which Net ITC available are total Rs. 2,66,04,646/- & Rs. 2,97,45,837/- respectively. The appellant has also submitted GSTR-2A for the month of November-2020 & December-2020 in which Net ITC available are total Rs. 2,69,33,523/- & Rs. 3,11,63,675/- respectively. In view of the above, the appellant is admissible for refund as per Section 54(3) of the CGST Act, 2017 read with Rule 89(4) of CGST Rules, 2017.

7. In this context, it is revealed from the impugned orders and statement of facts in appeal memorandum that the refund claim was rejected without quoting the relevant provision of law. Therefore, in view of above observation, I find force in the arguments of the appellant. I therefore, observe that the rejection of both the refunds to the appellant is faulty and unlawful and hence the impugned orders are not maintainable to that extent.

8. In view of the discussions above, I reject the ground of the impugned orders based on which the refund claims of the appellant are rejected and allow both the appeals filed by the appellant to the extent the issue of reply to SCN not made/not visible, as discussed above, without going in to merit of all other



aspects, which is required to be complied by the claimant in term of Section 54(3) of the CGST Act,2017 read with Rule 89(4) of the CGST Rules,2017.

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

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

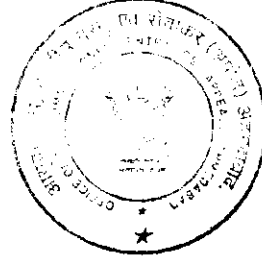
*Mohit Aggarwal*  
26/7/21

(मोहित अग्रवाल)  
अपर आयुक्त(अपील्स)

दिनांक : 26-07-2021

Attested

*[Signature]*



Superintendent (Appeals)

CGST, Ahmedabad.

By R.P.A.D.

To,

M/s. Venus Denim

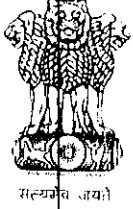
(GSTN:24AAMFV4350N1ZP),

181, Shahwadi, B/h MG Mill,

Narol, Ahmedabad-382405

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner(Appeals), CGST, Ahmedabad
3. The Commissioner, Central Tax, Ahmedabad-South.
4. The Assistant Commissioner CGST, Div-IV-Narol, Ahmedabad-South.
5. The Assistant Commissioner, System, Central Tax, Ahmedabad-South
6. Guard File.
7. P.A.



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:-) 20210764-SW000000AA64

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1244/2021/2319 To 2324

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-017/21-22  
दिनांक Date : 23-07-2021 जारी करने की तारीख Date of Issue 26-07-2021

श्री मोहित अग्रवाल, अपर आयुक्त (अपील) द्वारा पारित

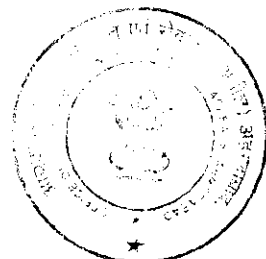
Passed by Shri. Mohit Agrawal, Additionl Commissioner (Appeals)

ग Arising out of Order-in-Original No. ZQ2412200130391 दिनांक: 11.12.2020 issued by Assistant Commissioner, Central GST, Division-I, Ahmedabad-South

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

M/s . Welcome Prints, 169, New Cloth Market, O/S Raipur Gate, Ahmedabad-380022.

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .





**ORDER-IN-APPEAL**

This appeal has been filed by M/s Welcome Prints, 169, New Cloth Market, O/s Raipur Gate, Ahmedabad-380022 [hereinafter referred to as 'the appellant'] against Order No. ZQ2412200130391 dated 11.12.2020 [hereinafter referred to as 'impugned order'] passed by the Assistant Commissioner of CGST, Division-I-Rakhial, Ahmedabad South [hereinafter referred to as 'adjudicating authority'].

2. Facts of the case, in brief, are that the appellant is registered under the Central Goods and Service Tax Act, 2017 vide GST registration number 24ACUPA4877F1ZE. The appellant is a merchant exporter of textile fabric having outward supply under HSN 5208 and 5209. The appellant has applied for refund amounting to Rs.7,46,586/- dated 21.10.2020 for the period from January 2020 to February 2020 under Section 54(3) of the CGST Act. The appellant was issued a Show Cause Notice dated 02.12.2020, wherein the adjudicating authority has:

- I. Asked whether notification 75/2019-Central Tax dated 26.12.2019 has been complied with or not;
- II. Informed that turnover of zero rated supplies can not be quantified as per Notification 16/2020-CT dated 23.03.2020;

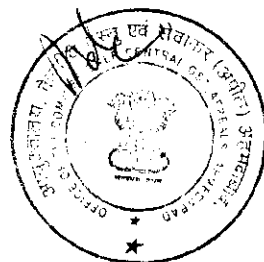
The reply to the above mentioned Show Cause Notice was submitted by the appellant on 10.12.2020. Vide the impugned order, the Adjudicating Authority rejected the refund claim amounting to Rs. 7,46,586/- of the appellant on the grounds that *"The claimant's contention is not in accordance with conditions specified in Notification 16/2020 dated 23.03.2020 i.e. failed to produce any proof regarding supply made by similarly placed supplier. Accordingly, claim is rejected under section 54 of CGST Act, 2017"*.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the following grounds:

- a. The Adjudicating Authority has erred in law and facts while disallowing their refund without specifying any relevant section under which the refund application is being rejected;
- b. The Adjudicating Authority has rejected the entire refund by wrongly calculating the turnover of zero rated supplies as per Notification 16/2020-Central Tax dated 23.03.2020 ;

4. Personal Hearing in the matter was held on 20.07.2021 through virtual mode. Shri Kunal Agarwal, Chartered Accountant attended hearing on behalf of the appellant. He reiterated the submissions made in appeal memorandum and requested to consider their appeal.

5. I have carefully gone through the facts of the case on record, grounds of appeal and the submissions made by the appellant. The issue to be decided here is whether in the facts and



circumstances of the case, the adjudicating authority's decision of rejecting of refund claimed by the appellant is legally correct and sustainable or not and the appellant is eligible for refund of the said amount of claim rejected.

6. I find that in the present case, the appellant has filed the refund claim in respect of the refund of unutilized Input Tax Credit (ITC) on Export of Goods and Services without payment of Integrated Tax. The said claims were filed under the provisions of Section 54(3) of the CGST Act, 2017 read with Section 16 of the Integrated Goods and Service Tax Act, 2017 and Rule 89(4) of the Central Goods & Services Tax Rules, 2017. The refund of ITC is to be granted as per the following formula prescribed under Rule 89(4) *ibid*:

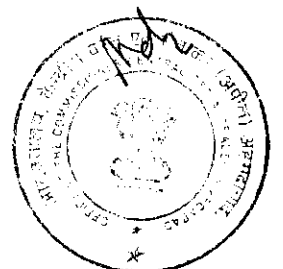
$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

7. The term 'Turnover of zero-rated supply of goods' mentioned in the above formula was amended vide Notification No. 16/2020-Central Tax dated 23.03.2020, which reads as under:

*(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both; "*

Thus, the turnover of zero rated supplies of goods to be considered for calculating the refund in the case has to be value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less.

8. It is observed that in the present case, the appellant has filed the refund claim for an amount of Rs.7,46,586/-. The said amount of Rs.7,46,586/- was rejected by observing that Turnover of zero rated supplies cannot be quantified as per Notification 16/2020-Central Tax dated 23.03.2020. It is seen that the appellant in their refund application in Form-GST-RFD-01 has declared the turnover of zero rated supply of goods and services as Rs.1,47,50,086/-. It is observed that in response to the SCN issued by the adjudicating authority stating that zero rated turnover can't be quantified as per Notification 16/2020CT dated 23.3.2020 and whether Notification 75/19-CT dated 26.12.2019 was complied or not, the appellant had submitted to the adjudicating authority that in order to justify that their export value was less than 1.5 times of value of goods supplied in domestic market, sample copy of invoice of both sales and purchase transaction was being attached by them along with the reply showcasing that export value was just 1.06 times the value of goods supplied in the domestic market; that those domestically purchased goods were exported by adding markup of around 6% resulting in 1.06 times of the value of domestic market value. They also stated that they were also attaching a declaration in

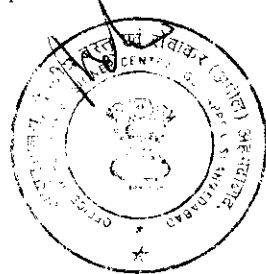


that regard. The adjudicating authority has not given any reason or made any discussion for rejecting the turnover declared by the appellant, in spite of there being a reply submitted by the appellant in this regard. The impugned order of the adjudicating authority, therefore, prima facie suffers from legal infirmity for being non-speaking in nature and for violation of principles of natural justice. Adjudicating authority ought to have considered the submissions made by the appellant and decided the case as per provisions of law giving a cogent reasoning for his decision.

9. In the present case, the appellant is a merchant exporter and he purchases fabric from domestic market and exports the same without any further process at their end. Therefore, logically the value of fabrics purchased by the appellant for the export purpose from various vendors in the domestic market is comparable and can be considered as value of like goods of similarly placed supplier, when there is no domestic supply of like goods by the appellant in the case. In terms of Rule 89(4) (C) of the Central Goods & Services Tax Rules, 2017, "*Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both*". Adjudicating authority has not provided any evidence that value of zero-rated supply of goods made during the relevant period is less than 1.5 times the value of like goods domestically supplied by the appellant or similarly placed supplier. In the present case, the appellant is a merchant exporter and he purchases fabric from domestic market and exports the same without any further process at their end. Therefore, logically the value of fabrics purchased by the appellant for the export purpose from various vendors in the domestic market is comparable and can be considered as value of like goods of similarly placed supplier, when there is no domestic supply of like goods by the appellant in the case.

10. Further, the contention of the appellant is that all the goods that are exported were purchased from domestic market only and no further substantial value addition was made after such procurement. They also submitted sample copy invoice of both sale and purchase transaction, which depicted that these domestically purchased goods are exported by adding markup of around 3.27% only in comparison to the value of domestic market value. The appellant has substantiated their claim by submitting the sample copy of purchase invoices and export sales invoices. The adjudicating authority has not recorded any reason in writing for rejecting the turnover declared by the appellant which clearly violates the principal of natural justice.

11. It is also observed that the present appeal filed by the appellant is delayed and the application for condonation of delay is also not made with the initial appeal documents. However, the appellant has vide additional submissions dated July 19, 2021 requested this



appellate authority to condone the delay in filing the appeal while considering the judgement of the Hon'ble Supreme Court of India. The Apex Court vide the said Suo Moto Writ Petition (C) No. 3/2020 has pronounced that the period(s) of limitation shall stand extended till further orders. Further I observed that Circular No. 157/13/2021-GST dated 20.07.2021 issued by CBIC also clarify the same as under:

*4(c) Appeals by taxpayers/ tax authorities against any quasi- judicial order:-  
Wherever any appeal is required to 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 proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.*

12. In view thereof, it is held that the adjudicating authority has wrongly rejected the refund claim amounting to. Rs.7,46,586/- of the appellant. Hence, the impugned order passed by him is not legally sustainable both on facts and merits and is liable to be set aside.

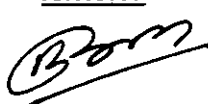
13. Accordingly, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and the appeal of the appellant is allowed with consequential relief.

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

(MOHITAGRAWAL)  
Additional Commissioner,  
CGST (Appeals), Ahmedabad.

Date: .07.2021.

Attested

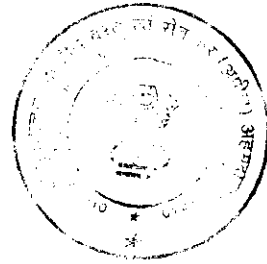
  
Superintendent (Appeals)  
Central GST, Ahmedabad

By Regd. Post A. D/Speed Post

To  
M/s Welcome Prints  
169, New Cloth Market, O/s Raipur Gate,  
Ahmedabad-380022.

Copy to:

1. The Chief Commissioner, CGST, Ahmedabad.
2. The Principal Commissioner CGST, Ahmedabad-South.
3. The Commissioner, CGST (Appeals), Ahmedabad.
3. The Deputy /Asstt. Commissioner, CGST, Division-I, Ahmedabad-South.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-South.
25. Guard file
6. PA File





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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रजिस्टर्ड डाक ए.डी. द्वारा

(DIN: + 20210764SW000081843E

क

फाइल संख्या : File No : GAPPL/ADC/GSTP/648/2021 / 2313 70 2318

ख

अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-016/21-22

दिनांक Date : 19-07-2021 जारी करने की तारीख Date of Issue : 23-07-2021

श्री मोहित अग्रवाल, अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mohit Agrawal, Additioanl Commissioner (Appeals)

ग

Arising out of Order-in-Original No. ZT2408200225831 दिनांक: 17.08.2020 issued by Assistant Commissioner, Central GST, Division-IV, Ahmedabad South

घ

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

M/s . Sinhal Brothers, 238, Opp. Cozi Restaurant, Ranipur Narol, Ahmedabad-382405

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



**ORDER IN APPEAL**

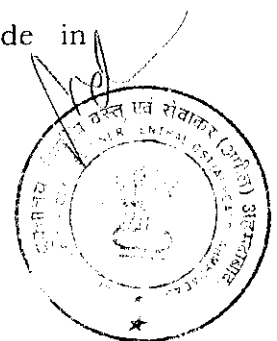
M/s. Sinhal Brothers (GSTN:24AAMFS8786M1Z6), 238, Opp. Cozi Resturant, Ranipur Narol, Ahmedabad-382405 (*hereinafter referred to as 'appellant'*) filed the present appeal against the Order No. ZT2408200225831 dated 17/08/2020 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST, Div-IV (Narol), Ahmedabad-South (*hereinafter referred to as 'sanctioning authority'*).

2. The facts of the case, in brief, are that the appellant filed refund amounting to Rs. 11,12,702/- under Section 54(3) of the CGST Act, 2017 on account of ITC accumulated due to Inverted Tax Structure for the month of December-2019 which was partially rejected amounting to Rs.9,28,167/- under the impugned order with the remark-*"The claimant has filed nil refund in the month of oct and nov 19 and they have claimed itc of the invoices of those months in the current claim filed for the month of Dec 19"*.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the following grounds:

- a. Refund order is bad in law since it does not contained any section under which the refund application is rejected;
- b. Refund less issued by not considering the input tax credit (ITC) of the purchase invoice having the invoice date of October 2019 and November-2019;
- c. There is no specific restriction placed to avail the ITC of invoices pertaining to previous months.
- d. Section 54(3) of CGST Act, 2017 does not specifically put any restriction to claim refund for those inputs whose invoices pertaining to the previous period.
- e. Para 11 of Circular No. 79/53/2018-GST dated 31/12/2018 has covered all parts of ITC from section 16 to section 39. The said circular has also clarified the meaning of "availed". This leaves no ground to reject the ITC pertaining to the invoices previous tax periods.

4. A personal hearing in the matter was held on 18.06.2021. Shri Kunal Agrawal, CA appeared before me for personal hearing on dated 18.06.2021 on behalf of appellant through video conferencing mode in appeal no. GAPPL/ADC/GSTP/648/2020-Appeal. He re-iterated submission made in appeal memorandum and requested to consider their appeal.



5. I have carefully gone through the facts of the case on record, grounds of appeal and the submissions made by the appellant. The issue to be decided in the present appeal is whether the impugned order partially rejecting the refund claim is correct or otherwise.

6. Prima facie, I find that the appellant had filed aforesaid refund claim under Section 54(3) of CGST Act, 2017 on account of ITC accumulated due to Inverted Tax Structure for the month of December-2019. I find that the sanctioning authority has partially rejected refund claim on the basis that the appellant has filed nil refund in the month of October & November, 2019 and they have claimed ITC of the invoices of those months in the current claim filed for the month of December, 2019. Further, I find that the appellant has mentioned in grounds of appeal that the refund is admissible as per Section 54(3) of the CGST Act, 2017 and rules made there under. In this context, before moving forward, let me first reproduce the relevant Section 16 of CGST Act, 2017 and Para 11 of Circular No. 79/53/2018-GST dated 31.12.2018, which are re-produced here below.

**SECTION 16. Eligibility and conditions for taking input tax credit. —**

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

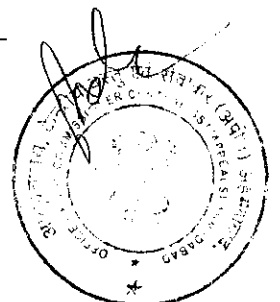
(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

[(aa) the details of the invoice or debit note referred to in ) clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

[**Explanation.** — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —



(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

(c) subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39 :

**Provided** that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment :

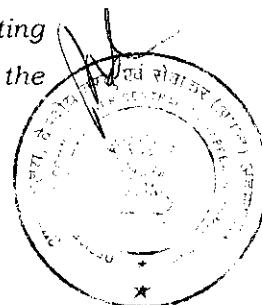
**Provided** further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed :

**Provided** also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or [\* \* \*] debit note pertains or furnishing of the relevant annual return, whichever is earlier :

**[Provided** that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the



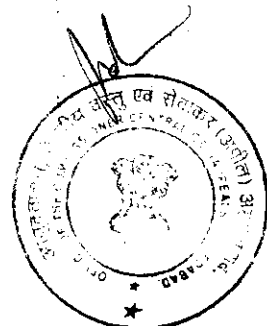


*financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]*

Para 11 of C.B.I. & C. Circular No. 79/53/2018-GST, dated 31-12-2018

*11. In this regard, it is clarified that 'Net ITC' as defined in rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been 'availed' when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in **FORM GSTR-3B**. Further, section 16(4) of the CGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2017, 'availed' in September, 2017 cannot be excluded from the calculation of the refund amount for the month of September, 2017.*

7. In view of above discussion, I find that the sanctioning authority has erred in law and facts of the cases by partial rejecting the refund application on the basis that the appellant has filed nil refund in the month of October & November, 2019 and they have claimed ITC of the invoices of those months in the current claim filed for the month of December, 2019. Further, I find that the Section 16(4) of the CGST Act, 2017 stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Further I find that, as per Section 16 of CGST Act, 2017 the registered person is entitled to claim input tax credit of GST paid on goods or services availed by him and used in the course of his business or furtherance of his business. I find that para 11 of CBIC Circular No. 79/53/2018-GST dated 31-12-2018 provides that the input tax credit can be said to have been 'availed' when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in **FORM GSTR-3B**. Further, I also find that it also provide an illustration that the input tax credit of invoices issued in August, 2017, 'availed' in September, 2017 cannot be excluded from the calculation of the refund amount for the month of September, 2017. In this context, I find that the the conditions of availment of credit have also been satisfied by the appellant. In view of the above, I find that the appellant is admissible for refund as per Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of CGST Rules, 2017.



8. In this context, it is revealed from the impugned order and statement of facts in appeal memorandum that the refund claim was rejected without quoting the relevant provisions of law. Therefore, in view of above observation, I find force in the arguments of the appellant. I therefore, observe that the partial rejection of refund to the appellant is faulty and unlawful and hence the impugned order is not maintainable to that extent.

9. In view of the discussions above, I reject the ground of the impugned order based on which the refund claim of the appellant is partially rejected and allow the appeal filed by the appellant to the extent as discussed above, without going in to merit of all other aspects which is required to be complied by the claimant in term of Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017.

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

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

(मोहित अग्रवाल)

अपर आयुक्त(अपील्स)

दिनांक : 19-07-2021

Attested

(B.S. Meena)

Superintendent (Appeals)

CGST, Ahmedabad.

By R.P.A.D.

To,

M/s. Sinhal Brothers

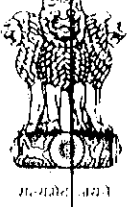
(GSTN:24AAMFS8786M1Z6),

238, Opp. Cozi Resturant,

Ranipur Narol, Ahmedabad-382405

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner(Appeals), CGST, Ahmedabad
3. The Commissioner, Central Tax, Ahmedabad-South.
4. The Assistant Commissioner CGST, Div-IV (Narol), Ahmedabad-South.
5. The Assistant Commissioner, System, Central Tax, Ahmedabad-South
- ✓ 6. Guard File.
7. P.A.



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

Central GST, Appeal Commissionerate, Ahmedabad

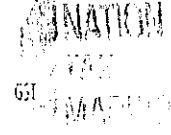
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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रजिस्टर्ड डाक ए.डी. द्वारा

(DIN:- 20210764SW0000046114

क फाइल संख्या File No : GAPPL/ADC/8/2020 / 2291 To 2296

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-15/21-22

दिनांक Date : 15-07-2021 जारी करने की तारीख Date of Issue 2007-2021

श्री मोहित अग्रवाल, अपर आयुक्त (अपील) द्वारा पारित

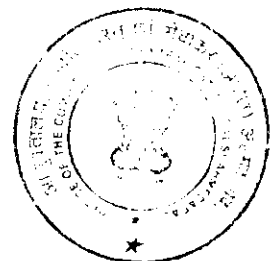
Passed by Shri. Mohit Agrawal, Additioanl Commissioner (Appeals)

ग Arising out of Order-in-Original No. ZU2405200022416 दिनांक: 04.05.2020 issued by Assistant Commissioner, Central GST, Division-I, Ahmedabad-South

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

M/s . Bansal Textile Mills, 233, New Cloth Market, Opp. Raipur Gate, Sarangpur, Ahmedabad-380002.

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



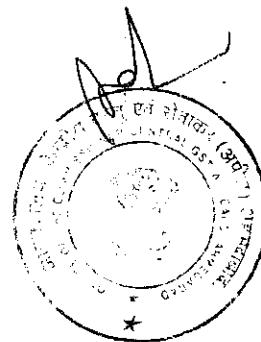
**ORDER IN APPEAL**

M/s. Bansal Textile Mills (GSTN:24AAJFB9187A2ZH), 233, New Cloth Market, Opp Raipur Gate, Sarangpur, Ahmedabad-380002 (*hereinafter referred to as 'appellant'*) filed the present appeal against the Order No. ZU2405200022416 dated 04/05/2020 (*hereinafter referred to as 'impugned order'*) passed by the Deputy Commissioner, Central GST, Div-I (Rakhial), Ahmedabad-South (*hereinafter referred to as 'adjudicating authority'*).

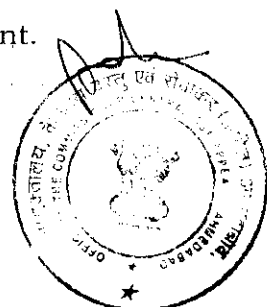
2. The facts of the case, in brief, are that the appellant filed refund amounting to Rs. 4,49,366/- under Section 54 of the CGST Act, 2017 on account of ITC accumulated due to Inverted Tax Structure for the month of November-2019 which was rejected under the impugned order with the remark-*"The claimant contention is not acceptable. The claimant has not followed the procedure prescribed under Notification 49/2019-CT DT. 09.10.2019. Accordingly, refund amount of Rs. 449366/- is rejected as per Section 54(3) of CGST Act, 2017"*.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the following grounds:

- a. Notification No. 49/2019-CT dated 09.10.2019 is a notification containing the amendment made in the CGST rules and does not laid any specific procedure of refunds.
- b. Refund order is bad in law since it does not contained any section under which the refund application is rejected;
- c. Refund application rejected without providing opportunity of being heard.
- d. Refund application rejected without providing proper details in deficiency memo.
- e. Refund application rejected without providing proper details in SCN. Learned Dy. Comm. has erred in law and facts of the cases by rejecting the entire refund application without conveying the specific non-compliance of the provision as contained in the Notification No. 49/2019 CT dated 09.10.2019.
- f. The said notification is a detailed notification containing more than 15 amendments in the CGST Rules. Further your appellant would also like to state that the necessary provisions for refund are contained in rule 89 of CGST rules and there is no mentioning or reference in respect of rule 89 in all those amendments mentioned in the said notification.



4. A personal hearing in the matter was held on 18.06.2021. Shri Kunal Agrawal, CA appeared before me for personal hearing on dated 18.06.2021 on behalf of appellant through video conferencing mode in appeal no. GAPPL/ADC/8/2020-Appeal. He re-iterated submission made in appeal memorandum and requested to consider their appeal.
5. I have carefully gone through the facts of the case on record, grounds of appeal and the submissions made by the appellant. The issue to be decided in the present appeal is whether the impugned order rejecting the refund claim is correct or otherwise.
6. Prima facie, I find that the appellant had filed aforesaid refund claim under Section 54 of CGST Act, 2017 on account of ITC accumulated due to Inverted Tax Structure for the month of November-2019. I find that the adjudicating authority has rejected refund claim on the basis that the appellant has not followed the procedure prescribed under Notification 49/2019-CT dated. 09.10.2019. Further, I find that the appellant has mentioned in grounds of appeal that the refund is admissible as per Section 54 of the CGST Act, 2017 and rules made there under. In this context, I find that the adjudicating authority has erred in law and facts of the cases by rejecting the entire refund application without conveying the specific non-compliance of the provision as contained in the Notification No. 49/2019-CT dated 09.10.2019. Further, I find that the appellant has also submitted Form GSTR-3B for the month of November-2019 in which Net ITC available is total Rs. 16,44,207/-. The appellant has also submitted GSTR-2A for the month of November-2019 in which Net ITC available is total Rs. 16,40,129/-. In view of the above, the appellant is admissible for refund as per Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of CGST Rules, 2017.
7. In this context, it is revealed from the impugned order and statement of facts in appeal memorandum that the refund claim was rejected without quoting the relevant section. I find that the Notification No. 49/2019-CT dated 09.10.2019 is a Notification containing the amendment in CGST rules and I find that it does not lay down any specific procedure for refund. Further, I find that the notice for rejection of application for refund and impugned order did not contain any reference of a particular condition, which the appellant did not follow. I find that the adjudicating authority is required to mention specifically, which procedure was not followed by the appellant. Therefore, in view of above observation, I find force in the arguments of the appellant. I therefore, observe that the rejection of refund to the claimant is faulty and unlawful and hence the impugned order is not maintainable to that extent.



8. In view of the discussions above, I reject the ground of the impugned order based on which the refund claim of the appellant is rejected and allow the appeal filed by the appellant to the extent the issue of procedure under Notification No. 49/2019-CT dated 09.10.2019 as discussed above, without going in to merit of all other aspects, which is required to be complied by the claimant in term of Section 54(3) of the CGST Act,2017 read with Rule 89(5) of the CGST Rules,2017.

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

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

*(Signature)* 10/7/21

(मोहित अग्रवाल)

अपर आयुक्त(अपील्स)

दिनांक : 15-07-2021

Attested

*(Signature)*

(B.S. Meena)

Superintendent (Appeals)

CGST, Ahmedabad.

By R.P.A.D.

To,

M/s. Bansal Textile Mills

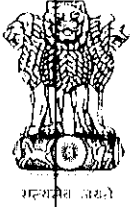
(GSTN:24AAJFB9187A2ZH),

233, New Cloth Market, Opp Raipur Gate,

Sarangpur, Ahmedabad-380002

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner(Appeals), CGST, Ahmedabad
3. The Commissioner, Central Tax, Ahmedabad-South.
4. The Assistant Commissioner CGST, Div-I (Rakhial), Ahmedabad-South.
5. The Assistant Commissioner, System, Central Tax, Ahmedabad-South
6. Guard File.
7. P.A.



**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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रजिस्टर्ड डाक ए.डी. द्वारा

(DIN:-20210764SW000051515A)

क फाइल संख्या : File No : GAPPL/ADC/GSTP/723/2020 /2235 TO 2240

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-14/21-22

दिनांक Date : 16-07-2021 जारी करने की तारीख Date of Issue : 16-07-2021

श्री मोहित अग्रवाल, अपर आयुक्त (अपील) द्वारा पारित

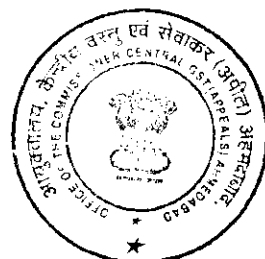
Passed by Shri. Mohit Agrawal, Additionl Commissioner (Appeals)

ग Arising out of Order-in-Original No. ZS2409200073254 दिनांक: 04.09.2020 issued by Assistant Commissioner, Central GST, Division-I, Ahmedabad-South

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

M/s . Welcome Prints, 169, New Cloth Market, O/S Raipur Gate, Ahmedabad-380022.

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



ORDER-IN-APPEAL

This appeal has been filed by M/s Welcome Prints, 169, New Cloth Market, O/s Raipur Gate, Ahmedabad-380022 [hereinafter referred to as 'the appellant'] against Order No. ZS2409200073254 dated 04.09.2020 [hereinafter referred to as 'impugned order'] passed by the Deputy Commissioner of CGST, Division-1, Ahmedabad South [hereinafter referred to as 'adjudicating authority'].

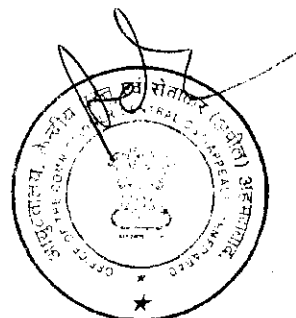
2. Facts of the case, in brief, are that the appellant is registered under the Central Goods and Service Tax Act, 2017 vide GST registration number 24ACUPA4877F1ZE. The appellant is a merchant exporter of textile fabric having outward supply under HSN 5208 and 5209. The appellant has applied for refund amounting to Rs.7,07,152/- dated 08.07.2020 for the period from October 2019 to December 2019 under Section 54(3) of the CGST Act. The appellant was issued a Show Cause Notice dated 18.09.2020, wherein the adjudicating authority has:

- i. Asked whether notification 49/2019-Central Tax dated 09.10.2019 has been complied with or not;
- ii. Informed that turnover of zero rated supplies worked out to be Rs. 1,77,785/- as per Notification No. 16/2020-Central Tax dated 23.03.2020. Accordingly, the eligible refund worked out to be Rs. 8603/- as per formula prescribed under Rule 89(4) of CGST Rules, 2017.

The reply to the above mentioned Show Cause Notice was submitted by the appellant on 28.08.2020. Vide the impugned order, the Adjudicating Authority sanctioned refund claim amounting to Rs.8,603/- and rejected the remaining refund claim amounting to Rs. 6,98,549/- of the appellant on the grounds that "*Turnover of Zero rated supplies works out to Rs. 1,77,785/- as per Notification No. 16/2020-Central Tax dated 23.03.2020. Accordingly, eligible refund work out to Rs. 8603/- as per formula under Rule 89(4) of CGST Rules, 2017 & Rs.6,98,549/- rejected*".

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the following grounds:

- a. The Adjudicating Authority has erred in law and facts while disallowing their refund without specifying any relevant section under which the refund application is being partially rejected;
- b. The Adjudicating Authority did not follow the principal of natural justice as they did not mention any reason for rejection of partial refund;
- c. The Adjudicating Authority did not provide the basis of calculation of revised turnover of zero rated supplies. Further, the adjudicating authority has arrived at 1.5 times of the value of like goods domestically supplied by considering their two invoices of other products and wastage sales made in domestic market as "like goods"; and
- d. The appellant was not provided the interest on delayed payment of the refund amounting to Rs. 8603/-;





4. Personal Hearing in the matter was held on 18.06.2021 through virtual mode. Shri Kunal Agarwal, Chartered Accountant attended hearing on behalf of the appellant. He reiterated the submissions made in appeal memorandum and requested to consider their appeal.

5. I have carefully gone through the facts of the case on record, grounds of appeal and the submissions made by the appellant. The issue to be decided here is whether in the facts and circumstances of the case, the adjudicating authority's decision of rejecting part of refund claimed by the appellant is legally correct and sustainable or not and the appellant is eligible for refund of the said amount of claim rejected.

6. I find that in the present case, the appellant has filed the refund claim in respect of the refund of unutilized Input Tax Credit (ITC) on input services or goods used in making zero rated supply of services viz. export of services without payment of Integrated Tax. The said claims were filed under the provisions of Section 54(3) of the CGST Act, 2017 read with Section 16 of the Integrated Goods and Service Tax Act, 2017 and Rule 89(4) of the Central Goods & Services Tax Rules, 2017. The refund of ITC is to be granted as per the following formula prescribed under Rule 89(4) *ibid*:

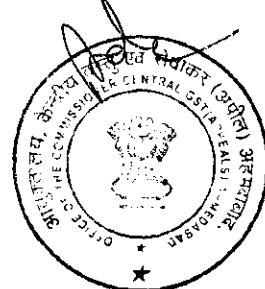
$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

7. The term 'Turnover of zero-rated supply of goods' mentioned in the above formula was amended vide Notification No. 16/2020-Central Tax dated 23.03.2020, which reads as under:

*(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both; "*

Thus, the turnover of zero rated supplies of goods to be considered for calculating the refund in the case has to be value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less.

8. It is observed that in the present case, the appellant has filed the refund claim for an amount of Rs.7,07,152/- against which the amount of refund sanctioned by the adjudicating authority was only to the tune of Rs.8,603/-. The remaining amount of Rs.6,98,549/- was rejected by observing that Turnover of zero rated supplies works out to Rs.1,77,785/- as per Notification No.16/2020-Central Tax dated 23.03.2020 and accordingly the eligible refund works out to Rs.8,603/-. It is seen that the appellant in their refund application in Form-GST-RFD-01 has declared the turnover of zero rated supply of goods and services as Rs.1,46,14,275/-. The adjudicating authority in his



impugned order has not provided as to on what basis and how he has worked out the relevant turnover as Rs.1,77,785/-. The adjudicating authority has not given any reason or made any discussion for rejecting the turnover declared by the appellant, in spite of there being a reply submitted by the appellant in this regard. The impugned order of the adjudicating authority, herefore, prima facie suffers from legal infirmity for being non-speaking in nature and for violation of principles of natural justice. Adjudicating authority ought to have considered the submissions made by the appellant and decided the case as per provisions of law giving a cogent reasoning for his decision.

9. It appears that the adjudicating authority might have worked out the turnover of zero rated supply of goods in the case by considering the value of the invoices issued by the appellant for other products and wastage sales made in domestic market as 'like goods domestically supplied by the appellant' and taking 1.5 times of the said value of goods. It is the contention of the appellant that only less than 1% of turnover is sold in domestic market for the reason that the said products were not fit to meet the standards of export quality and in no case such waste sales can be considered as 'like goods' for export quality product. I find considerable force in the said argument of the appellant. It is a quite evident fact that the goods supplied as of substandard quality as waste are not at par with the goods being exported in quality and hence are not comparable with such goods and they can, in no way, be considered as 'like goods supplied by the appellant' for the purpose of Rule 89(4) of the CGST Rules, 2017. Therefore, the act of the adjudicating authority of considering both the products as same is not legally and logically sustainable. Further, it also appears from the impugned order that adjudicating authority has merely multiplied the domestic turnover by 1.5 times in order to arrive at the value of sales of like goods domestically supplied instead of comparing per unit prices. Such a comparison is not logical and reasonable by any stretch of imagination. In the present case, the appellant is a merchant exporter and he purchases fabric from domestic market and exports the same without any further process at their end. Therefore, logically the value of fabrics purchased by the appellant for the export purpose from various vendors in the domestic market is comparable and can be considered as value of like goods of similarly placed supplier, when there is no domestic supply of like goods by the appellant in the case. The appellant has stated that the domestically purchased goods are exported by adding markup of around 2.97% resulting in 1.09 times of the value of domestic market value. Further, more than 99% of their total turnover is attributable to export only and only less than 1% goes to domestic market as second quality/waste. The appellant, in their appeal, has submitted copies of export sales invoices and copies of all the purchase invoices relevant to the export and claimed that the value of exported fabrics is around 1.09 times of the value of purchase of the said fabrics exported, which is below the limit of 1.5 times the value of like goods specified in the definition of 'Turnover of zero-rated supply of goods' in the formula prescribed under Rule 89(4) of the CGST Rules, 2017. Therefore, I find merit in the contention of the appellant in this regard. Since the value of zero-rated supply of goods made by the appellant during the relevant period without payment of IGST under letter of undertaking is less than the value which is 1.5 times the value of like goods domestically supplied by the similarly placed supplier, the value of zero-rated supply

