



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जी एसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/339/2021-APPEAL / 3964 TO 3969

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-47/2021-22**

दिनांक Date : **22-10-2021** जारी करने की तारीख Date of Issue : **25-10-2021**

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. No. **ZZ2404200431304** दिनांक: **24-04-2020** issued by Deputy Commissioner, Division VI, Vastrapur, Ahmedabad-South

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

The Federal Bank Ltd., PB No.4073, Ashram Road, Navrangpura, Ahmedabad 380009

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



ORDER IN APPEAL

The Federal Bank Ltd., PB No.4073, Ashram Road, Navrangpura, Ahmedabad 380 009 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 5-10-2020 against Order No.ZZ2404200431304 dated 24-4-2020 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Division VI, Vastrapur, Ahmedabad South (hereinafter referred to as the 'adjudicating authority').

2. Brief facts of the case is that the appellant is registered under GSTIN 24AABCT0020H1Z2. The appellant has filed refund claim for Rs.6,80,306/- on the ground that on reconciliation statement furnished in GSTR9C resulted in a refund of Rs.6,80,306.42. This excess represented GST paid (in cash/utilizing eligible ITC) in Form GSTR 3B in excess of GST actually payable on the taxable value of supply reckoned based on the audited books of accounts for the period ended 31-3-2018. The appellant was issued a Notice for rejection of their refund claim due to reason that *There is no such provision in CGST Act, 2017 for refund on account of excess amount paid in Annual Return.* The adjudicating authority vide impugned order rejected the refund claim on the reasons mentioned in the Notice.

3. Being aggrieved the appellant filed the subject appeal on the ground that the adjudicating authority has erred in rejecting the refund alleging that the appellant claimed refund of excess tax paid in Annual return and that there is no provision in the Act to refund such excess payment. The statement made by the adjudicating authority is not factually correct and erred. The appellant has not made any excess payment of GST in Annual Return; rather the refund amount related to excess GST paid in GSTR3B return over the amount actually liable to be paid on the taxable value of supply reckoned based on the audited books of accounts for the period ended 31-3-2018 ; that the adjudicating authority ought to have noted that the refund related to tax paid for the return period of March 2018 as the GST paid for the said period is more than the refund sought ; that the adjudicating authority has erred in denying the opportunity of being heard before the order rejecting the refund application. In view of above the appellant requested to set aside the impugned order.

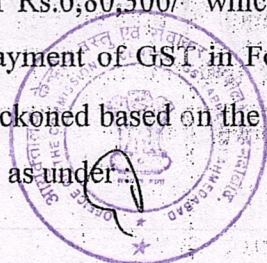
4. Personal hearing was held on dated 13-10-2021. Smt.Jyothsna S (Senior Manager) appeared on behalf of the appellant on virtual mode. She has nothing more to add to their written submission/appeal submitted on 5-10-2020.

5. I have carefully gone through the facts of the case, grounds of appeal, impugned order and documents made available in appeal. At the outset, I find that the impugned order was communicated to the appellant on 24-4-2020 and the subject appeal was filed in this office on dated 5-10-2020 ie after a period of more than five months. As per Section 107 of CGST Act, 2017, the time limit for filing appeal was prescribed as three months from the date of



communication of the Order, which is extendable for further period of one-month subject to showing sufficient cause. Thus, the present appeal was filed beyond the time limit prescribed under Section 107 of the Act. In this regard, the appellant has submitted a petition for condonation of delay in filing the appeal citing the reason that they had initially filed the appeal within the due date before the Commissioner (Appeals), CGST, Vadodara on dated 10-8-2020, which was returned to them by the office of above appellate authority vide letter dated 14-8-2020 stating that the jurisdiction for filing does not lies with Commissioner (Appeals), CGST, Vadodara. Accordingly, they had filed the present appeal before this office on dated 5-10-2020 and requested to condone the delay in filing the appeal and to take up the appeal for disposal on merits. In the matter relating to time limit for filing appeals, I find that Hon'ble Supreme Court's vide its judgment dated 23-3-2020, taking suo motto cognizance of the situation arising due to Covid 19 pandemic, has extended the period of limitation prescribed under the Law with effect from 15-3-2020 till further Orders. Subsequently vide Order dated 27-4-2021, Hon'ble Supreme Court has restored the Order dated 23-3-2020 thereby directing that the period (s) of limitations as prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings, whether condonable or not, shall stand extended till further orders from 15-3-2020. In pursuance to said decision, CBIC vide Circular No.157/13/2021-GST dated 20-7-2021 has also clarified that *appeals by tax payers/tax authorities against any quasi judicial order, whether any appeal is required to be filed before Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various Courts against any quasi judicial order or where a proceedings for revision or rectification of any order is required to be undertaken, the time limit for the same would stand extended as per the Hon'ble Supreme Court's Order. In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27-4-2021 is applicable in respect of any appeal which is required to be filed before Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various Courts against any quasi judicial order or where proceedings for revision or rectification of any order is required to be undertaken and is not applicable to any other proceedings under GST Laws.* In view of above decision and clarification I find that since the time limit for filing the present appeal fall during the period after 15-3-2020, I hold that the present appeal is squarely covered by the Hon'ble Supreme Courts's decision and hence not hit by limitation factor prescribed under Section 107 of CGST Act, 2017.

6. Regarding merits of the case, I find that in the subject case, the appellant has claimed refund of Rs.6,80,306/- which was noticed in Form GSTR-9C. The claim amount represents excess payment of GST in Form GSTR3B over the GST actually payable on taxable value of supply reckoned based on the audited books of accounts for the period ended March 2018, which is arrived as under:



Sr No.	Particulars	CGST	SGST	IGST	Total
1	Value of taxable supply as per audited books of account				108295720
2	Tax payable on above	8630871	8630871	270445	17532187
3	Tax payable under RCM	1034162	1034162	0	2068323
4	Total tax payable	9665033	9665033	270445	19600510
5	Tax paid GSTR 3 E	1004399	10005973	270445	20280817
6	Excess tax paid and reported in GSTR9C and claimed as refund	339366	340940	0	680306

The appellant has also submitted that above refund related to tax paid for the return period of March 2018, as the GST paid for the said period is more than the refund sought for as arrived as under :

Particulars	CGST	SGST	IGST	Total
GST actually paid for the return period March 2018	1500670	1500670	42379	3043719
GST payable for the said period (after reducing Excess payment made in earlier months)	1161304	1159730	62109	2383142
Excess GST paid, attributable to March 2018	339366	340940	(19730)	
Refund claim for the return period March 2018	339366	340940	0	680306

7. I find that the appellant has filed application for refund of Rs.6,80,306/- so arrived by them, which was rejected by the adjudicating authority vide impugned order, due to the reason of absence of provision in CGST Act, 2017 for refund on account of excess amount paid in Annual Return. However, as per appellant's contention the excess payment and consequent claim of refund has arisen in reconciliation statement Form GSTR 9C, which is a part of Annual Return to be filed under GST Law. Therefore, I find it pertinent to record the provisions governing preparation and filing of Annual Returns under GST Rules. I find that Rule 80 of CGST Rules, 2017 inserted vide Notification No10 /2017 – Central Tax dated 28 June, 2017, stipulates filing of Annual Return as under :

80. Annual return.- (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return as specified under sub-section (1) of section 44 electronically in FORM GSTR-9 through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

Provided that a person paying tax under section 10 shall furnish the annual return in FORM GSTR-9A.

(2) Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in FORM GSTR -9B.

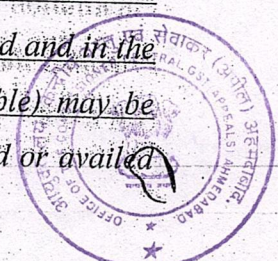
(3) Every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

8, Further, vide Press Release dated 3 rd July 2019, CBIC has issued further clarification regarding Annual Return as under :

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

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

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

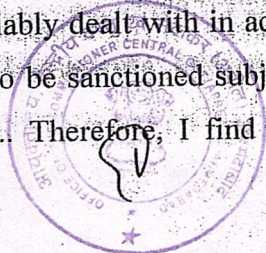


through the annual return. If taxpayers find themselves liable for reversing any input tax credit, they may do the same through FORM GST DRC-03 separately.

9. In view of above, I find that Form GSTR-9C is a reconciliation statement, which is to be furnished annually along with annual return in Form GSTR-9, by the taxpayer whose aggregate turnover is above a specified limit, i.e. two crores during a financial year duly verified and digitally signed by Chartered Accountant/ Cost Accountant. It is an annual compilation of outward supplies, inward supplies, tax liability and input tax credit availed during a financial year. It consists of Part A-Reconciliation Statement and Part B-Certification. The purpose for submission of Form GSTR 9C statement is (i) to reconcile the turnover declared in audited Annual Financial Statement with turnover declared in Annual Return (GSTR 9); (ii) to reconcile the tax paid and (iii) to reconcile input tax credit with due certification by the statutory auditor. It is a statement primarily prepared for rectifying and regularizing any information or details left out in the periodical returns. In case of any short payment of tax or wrong availment of ITC, it facilitates the tax payer to pay the same, along with interest, through FORM GST DRC-03. As per clarification issued by the Board vide Press Release dated 3-7-2019, such rectification can be made not only on short payment of tax and wrong availment of ITC but also for any excess payment of tax noticed at the time of reconciliation by way of filing of refund application. I find that the circumstances in the subject appeal which lead to claim of refund is on account of excess payment of tax noticed at the time of reconciliation and filing of GSTR Form 9C.

10. In the subject case, I find that the adjudicating authority has rejected the claim on the ground of absence of provisions under CGST Act, 2017 for grant of refund on account of excess amount paid in Annual Return. Under GST Law, the provisions for claiming refund of tax paid are governed under Section 54 of CGST Act, 2017. In this regard, CBIC vide Circular No. 125/44/2019 - GST Dated the 18th November, 2019, has issued guidelines for processing of refund applications, wherein at Para 3 various types of refund are specified which also includes refund on account of excess tax paid. It is noteworthy to mention that the Circular does not put any restriction for refund of excess paid tax under any specified circumstances. In other words, once it is found that there is excess payment of tax under whatever circumstances, the registered person gain their right to claim refund of tax so paid and any claim so filed is required to be processed in accordance with Section 54 of Act, 2017 and guidelines issued there under.

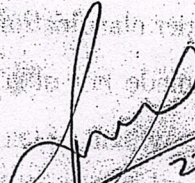
11. In the subject case, the excess payment of tax was not disputed but the situation under which such excess payment has occurred was disputed. As stated hereinabove, any claim of refund either for excess payment of tax or for any other reason falls within the purview of Section 54 and should invariably be dealt with in accordance with Section 54 of CGST Act, 2017 and refund if admissible is to be sanctioned subject to fulfilment of conditions, safeguards and other prescribed procedures. Therefore, I find that the reasoning given by the adjudicating



authority that there is no provision under CGST Act, 2017 to grant of refund on account of excess amount paid in Annual Return is not legally correct. I also find that the reasoning given by the adjudicating authority is also on a wrong presumption inasmuch as the claim was not made for excess tax paid in Annual Return but for excess tax payment noticed in the reconciliation statement in Form GSTR 9C. Since excess payment of tax was not disputed and the claim fall within the purview of Section 54 of Act, I find that rejecting the claim due to absence of provisions under CGST Act, 2017 is legally untenable. Further, the appellant has also stated that they were denied an opportunity of personal hearing before rejecting the claim. Considering the above two aspects, I find that the impugned order passed by the adjudicating authority is devoid of any merit and there is merit in the appeal filed by the appellant. Accordingly I allow the appeal and set aside the impugned order passed by the adjudicating authority.

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

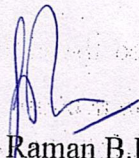
12. The appeal filed by the appellant stands disposed of in above terms.


22/10/24

(Mihir Rayka)
Joint Commissioner (Appeals)

Date :

Attested


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



By RPAD

To,

M/s. Federal Bank Ltd,
P.B. No. 4073,
Ashram Road,
Navrangpura,
Ahmedabad-380009.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone..
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Commissioner, CGST (Appeals), Ahmedabad.
4. The Deputy Commissioner, CGST Division-VI, Ahmedabad South.
5. The Asstt. Commissioner, CGST (System), HQ, Ahmedabad South.
(for uploading OIA on website)
6. Guard file.
7. P.A. File