



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-20211064SW0000226145**

रजिस्टर्ड टांक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/481/2021-APPEAL / 3970 to 3975ख अपील आदेश संख्या Order-In-Appeal Nos: **AHM-CGST-001-APP-JC-50/2021-22**दिनांक Date : **26-10-2021** जारी करने की तारीख Date of Issue : **26-10-2021**

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. No. **ZT2407200481130** दिनांक: **30-07-2020** issued by Assistant Commissioner, GST Division VIII, Vejalpur, Ahmedabad South

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

M/s. Mahindra and Mahindra Ltd., 7th Floor, B1, 701 to 702, Palladium, Opp**Vodafone House, B/H Divya Bhaskar Press, Corporate Road, Ahmedabad 380051**

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

ORDER IN APPEAL

M/s. Mahindra and Mahindra Ltd., 7th Floor, B1, 701 to 702, Palladium, Opp Vodafone House, B/H Divya Bhaskar Press, Corporate Road, Ahmedabad 380 051 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 27-10-2020 against Order No.ZT2407200481130 dated 30-7-2020 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, GST Division VIII, Vejalpur, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Brief facts of the case is that the appellant is registered under GSTIN 24AAACM3025E1Z5. The appellant has issued GST invoices in favour of Sinnar Municipal Corporation, Sinnar for supply of 12 Nos. Of Bolero Maxi Truck Plus CBC in the month of November 2018. The supplies were billed against purchase Order No.GEMC 511687728360690 dated 26-9-2018. The supply of these vehicles did not take place and hence no consideration was made to them. At the time of dispatching the vehicles, the appellant has paid appropriate tax of Rs.16,26,502/- which was shown in their GSTR 3B returns and GSTR 1 return. The appellant was forced to cancel their supplies and all the vehicles are returned to their Ahmedabad Regional Office. Since, the aforesaid transaction did not qualify as supply under the provisions of the GST Act, 2017 the appellant filed refund claim for the amount of Rs.16,26,502/- paid in excess. The appellant was served with a deficiency memo dated 17-6-2020 for not attaching the supporting documents along with the refund claim. After submission of the documents, the appellant was issued a show cause notice dated 20-7-2020 proposing to reject the claim on the ground that i) as per Circular No.26/26/2017, tax can be adjusted in subsequent months and ii) as per Circular No.135/05/2020 tax paid in excess via ITC cannot be allowed in cash. Accordingly, the adjudicating authority vide impugned order rejected the claim.

3. Being aggrieved the appellant filed the present claim on the following grounds:
- i. In the instant case neither any supply of goods has taken place ultimately nor have they received any consideration from customer of goods. Therefore no supply of goods subjected to GST was carried out by them;
 - ii. As per CBIC Circular No.125/44/2019-GST dated 18-11-2019 the appellant had filed refund claim for excess payment of tax, which cannot be denied and hence action of the adjudicating authority is against the principle of judicial discipline and needs to be set aside;
 - iii. The excess payment of tax under Section 34 (2) of the CGST Act, 2017 mandates that credit note with GST can be provided only before September following the end of the FY. In their case initial dispatch took place in November 2018 but the Motor Vehicles were returned back in the month of March 2020. Hence they could not issue credit note

by September 2019 and therefore excess payment of GST could not be adjusted in subsequent months while filing GSTR 3B;

- iv. That as per Circular NO.26/26/2017-GST dated 29-12-2017, it was clarified that in the event adjustment of excess tax paid is not feasible, refund may be claimed and therefore they had filed the above application ;
- v. The refund of Rs.16,26,502/- may be sanctioned by crediting the same to their Electronic Credit Register since the tax liability was also debited against ITC while filing GSTR3B of November 2018 as notified vide Notification NO.16/2020-Central Tax dated 23-3-2020 and further clarified vide Circular No.135/5/2020 GST dated 31-3-2020. The above provisions and Circulars have been totally ignored by the adjudicating authority and hence order needs to be set aside and refund claim may be sanctioned.
- vi. The appellant relied upon Order dated 11-4-2019 passed by Hon'ble High Court of Gujarat in the case of M/s.Garden Silk Mills Vs UOI and contended that in case an amount of refund cannot be re-credited in Electronic Credit Ledger account, the same can be refunded in cash.

4. Personal hearing was held on 17-10-2020. Shri Peter Pinto, DGM (GST) of the appellant appeared on virtual mode. He told that decision may be taken on the documents submitted by them till date.

5. I have carefully gone through the facts of the case, grounds of appeal and documents available on record. In this case, the refund claim filed by the appellant was rejected vide impugned order due to reason that as per Circular No.26/26/2017 tax paid in excess is to be adjusted in subsequent months and as per Circular No. 135/05/2020 refund of tax paid in excess via ITC is not allowed in cash, it may be re-credit via PMT 03.

6. At the outset, I take up the issue relating to Circular No.26/26/2017-GST dated 29-12-2017 in which the para relevant to the subject issue is as under :

Para 4 of Circular No.26/26/2017-GST dated 29-12-2017.

It is clarified that as return in FORM GSTR-3B do not contain provisions for reporting of differential figures for past month(s), the said figures may be reported on net basis alongwith the values for current month itself in appropriate tables i.e. Table No. 3.1, 3.2, 4 and 5, as the case may be. It may be noted that while making adjustment in the output tax liability or input tax credit, there can be no negative entries in the FORM GSTR-3B. The amount remaining for adjustment, if any, may be adjusted in the return(s) in FORM GSTR3B of subsequent month(s) and, in cases where such adjustment is not feasible, refund may be claimed. Where adjustments

have been made in FORM GSTR-3B of multiple months, corresponding adjustments in FORM GSTR-1 should also preferably be made in the corresponding months.

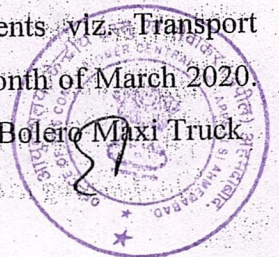
7. Referring to above clarification, the adjudicating authority vide impugned order has rejected the claim which provides for making adjustment in subsequent months. However, the appellant has challenged the same on the basis of second part of the clarification, wherein it was clarified that in cases where such adjustment is not feasible refund may be claimed.

8. In the subject case the claim for refund was made due to reason of return of goods supplied on payment of payment of tax. I find that the treatment of return of goods supplied on payment of tax is governed under Section 34 of CGST Act, 2017 as under :

Section 34 (1) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed.

9. As per above statutory provisions in case of circumstances specified under sub section (1), which includes return of goods, the supplier has to issue a credit note and to declare the same in the return for the month during which such credit note has been issued but not later than September following the end of the FY in which supply was made or the date of furnishing relevant annual return, whichever is earlier and the tax liability shall be adjusted in such manner as may be prescribed. In the subject case, supply was made in the November 2018 but as per the appellant's contention the same was returned by the buyer only on March 2020 and by that time, the time period prescribed under Rule 34, which is in the month of September 2019, has already expired. In support of the same, the appellant has attached letter dated 19-5-2020 issued by the buyer, Sinnar Municipal Council, Sinnar. On scrutiny of the same I find that said letter was issued on the request of the appellant confirming cancellation of purchase order, non delivery of the vehicles and non availment of ITC credit or any other benefit. It is seen that the letter does not specify whether the vehicles were returned back to the appellant in March 2020 after receipt of the same. The appellant has also not submitted any other documents viz. Transport documents, delivery challan evidencing return back of the vehicles in the month of March 2020. Since the goods involved in the transaction is 12 Nos of Motor Vehicles viz. Bolero Maxi Truck



Plus, unless necessary documents indicating return of the vehicles are submitted, it is hard to accept that such quantity of goods involving substantial value are allowed to be kept by the buyer for long period of 16 months. Therefore, I find it difficult to accept the contention that the goods supplied in November 2018 were returned back only in March 2020 and by that time the time period prescribed for making adjustment of credit notes has expired. In the subject case, the appellant has challenged the Order of the adjudicating authority mainly on the ground of non feasibility to make adjustment in subsequent months. However, in the present appeal proceedings, since the appellant could not satisfactorily prove with documentary evidence that it was not feasible to make adjustment in their returns, I find that the submission made by the appellant does not support the prayer made to set aside the order passed by the adjudicating authority based on the above Circular.

10. Regarding Order passed based on Circular No.135/5/2020 GST dated 31-3-2020, the adjudicating authority has taken the view that the tax paid through electronic credit register cannot be refunded in cash and that the same can be taken as re-credit via PMT -03. The relevant part of the Circular is as under :

4.2 For the refund of tax paid falling in categories specified at S. No. (i) to (l) above i.e. refund claims on supplies other than zero rated supplies, no separate debit of ITC from electronic credit ledger is required to be made by the applicant at the time of filing refund claim, being claim of tax already paid. However, the total tax would have been normally paid by the applicant by debiting tax amount from both electronic credit ledger and electronic cash ledger. At present, in these cases, the amount of admissible refund, is paid in cash even when such payment of tax or any part thereof, has been made through ITC.

4.3.1 As this could lead to allowing unintended encashment of credit balances, this issue has been engaging attention of the Government. Accordingly, vide Notification No.16/2020-Central Tax dated 23.03.2020, sub-rule (4A) has been inserted in rule 86 of the CGST Rules, 2017 which reads as under:

"(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03."

4.3.2 Further, vide the same notification, sub-rule (1A) has also been inserted in rule 92 of the CGST Rules, 2017. The same is reproduced hereunder:

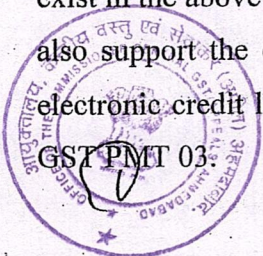
"(1A) Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against

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any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger."

4.4 The combined effect the abovementioned changes is that any such refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers (other than the refund of tax paid on zero-rated supplies or deemed export), the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed. Such amount, shall be accordingly paid by issuance of order in FORM GST RFD-06 for amount refundable in cash and FORM GST PMT-03 to re-credit the amount attributable to credit as ITC in the electronic credit ledger.

11. As per Notification No.16/2020-Central Tax dated 23-3-2021 and clarification, the refund of tax paid through electronic cash register is to be refunded in cash and refund of tax which has been debited from the electronic credit ledger will be allowed by way of re-credit in electronic credit register by issue of FORM GST PMT-03. The above provisions and clarifications were issued, as a measure to restrict refund of tax paid through electronic credit register by way of cash and thereby to prevent encashment of ITC. However the appellant, though admitted that the entire amount of tax involved on supply of the subject goods were paid through electronic credit ledger, relying on Order dated 11-4-2019 passed by Hon'ble High Court of Gujarat in the case of M/s.Garden Silk Mills ltc Vs UOI, challenged the order passed by the adjudicating authority and contended that in case the amount of refund cannot be re-credit in the electronic credit ledger account the same can be refunded in cash. On closer reading of the said case, I find that in the said case the petitioner has filed refund claim by debiting the claim amount in electronic credit ledger in terms of Rule 89 (3) of CGST Rules, 2017. The claim was not sanctioned within the reasonable time period and hence the petitioner requested the Department for re-credit of the same in electronic credit register in terms of Rule 93 (2) of CGST Rules, 2017. Since, there was no response, the petitioner filed appeal before Hon'ble High Court of Gujarat. The Hon'ble High Court vide Order dated 11-4-2019, referring to Rule 93 of CGST Rules, 2017, allowed the appeal filed by the petitioner and directed the Department to re-credit the claimed amount in Electronic Credit Ledger on the basis of Form GST RFD-PMT 03. I find that the facts and circumstances exist in the above case is entirely different from the facts of the subject case. However, the Order also support the clarification issued vide above Circular that the refund of tax paid through electronic credit ledger is to be allowed by way of re-credit in said ledger on the basis of Form



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12. In the subject case, there is no dispute regarding admissibility of refund and payment of tax through electronic credit register. Therefore, as per Circular No.135/5/2020 GST dated 31-3-2020 the appellant is entitled for relief by way of re-credit of tax paid in their electronic credit ledger only and not by way of cash. Hence, I find that the order passed by the adjudicating authority based on Circular above is also legally and factually correct. Accordingly, I reject the appeal filed by the appellant and upheld the order passed by the adjudicating authority.

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

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

(Mihir Rayka)
Joint Commissioner (Appeals)

Date :

Attested

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



By RPAD

To,

M/s.Mahindra and Mahindra Ltd.,
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Ahmedabad 380 051

Copy to :

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