



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 Phavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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**DIN-20211064SW0000115855**

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/173/2021-APPEAL / H216 70 H221

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-53/2021-22**

दिनांक Date : **29-10-2021** जारी करने की तारीख Date of Issue : **29-10-2021**

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. **ZT2401200087034** दिनांक: **09-01-2020** issued by  
The Deputy Commissioner, Division-I (Rakhial), Ahmedabad South

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

**M/s.Shree Balaji Fashion, E-53 Sumel Business Part 1,  
Behind New Cloth Market, Ahmedabad 380002**

(A)	इस आदेश(अपील) से न्यथित 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> .

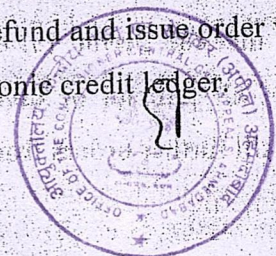


**ORDER IN APPEAL**

M/s.Shree Balaji Fashion, E-53 Sumel Business Part 1, Behind New Cloth Market, Ahmedabad 380 002 (hereinafter referred as 'the appellant') has filed the present appeal on dated 31-8-2020 against Order No.ZT2401200087034 dated 9-1-2020 (hereinafter referred to as 'the impugned Order') passed by the Deputy Commissioner, Division I (Rakhial), Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant is registered under GST Registration No.24AEBPJ2862A1Z5. The appellant has filed refund claim for Rs.1,38,536/- for excess payment of tax made by them. The claim was filed on the ground that in the GSTR3B return filed by them for the month of October 2017, the taxable value of credit notes issued by the appellant was correctly reduced from the taxable value of outward supplies but IGST on those credit notes of Rs.69,268/- instead of reducing from was added to the IGST on outward supplies which led to incorrect excess outward tax liability of Rs.1,38,536/- due to double effect. Based on the above, the total IGST liability on outward supplied amounted to Rs.13,97,972/- out of which Rs.11,07,503/- was first paid by utilizing the credit available in the electronic credit ledger and remaining amount of Rs.2,90,469/- was paid by utilizing cash from the electronic cash ledger. The above mistake was noticed by the appellant in the month of December 2019 and immediately on noticing the same, the appellant filed an application for refund on account of excess payment of tax under Section 54 of CGST Act, 2017. The appellant was issued a show cause notice reference number ZU2412190190112 dated 17-12-2019 in RFD 08, proposing rejection of their refund claim under Rule 92 of CGST Rules, 2017 on the reason that the appellant may adjust/reduce such over reported liability in the return of subsequent months as per Circular No.26/26/2017-GST dated 29-12-2017. The appellant submitted reply to the show cause notice wherein they contended that the time period specified for rectification/adjustment as per proviso to sub section (9) of Section 29 of CGST Act, 2017 had expired so making the adjustment was not feasible. However, the adjudicating authority vide impugned Order has rejected the refund application of the appellant, on the ground that the appellant has not established about the subsequent adjustment/utilization of the claimed amount.

3. Being aggrieved with the impugned Order, the appellant filed the present appeal on the ground that as per sub section (9) of Section 39 of CGST Act, 2017 the time period for rectification/adjustment has expired since they had noticed the excess payment only in December 2019 ; that as per CircularNo.26/26/2017-GST dated 29-12-2017 refund is admissible in cases where such adjustment is not feasible ; that as per sub rule (4A) of Rule 86 of CGST Rules, 2017 if a refund has been claimed on account of tax wrongly paid or paid in excess by utilising the balance in electronic credit ledge, it can be re-credited to that ledger if the refund is found admissible. In view of above, the appellant requested to consider this appeal and set aside the refund rejection order and direct the proper officer to sanction the refund and issue order with for re crediting the claimed amount of wrongly excess paid tax in electronic credit ledger.



4. Personal hearing was held on 21-10-2021. Shri Jaydeep Saharan, Chartered Accountant appeared on behalf of the appellant on virtual mode. He told that he wants to submit additional admissible. He has been given 3 working days for the same. Accordingly, the appellant vide letter dated 26-10-2021 given additional submissions as under:

i. That the appeal was filed beyond the due date prescribed under Section 107 of the CGST Act, 2017. However, due to spread of Covid 19, Notification No.35/2020 dated 3-4-2020 and Notification No.55/2020 dated 27-6-2020 was issued as per which the time limit for filing appeal which falls from 20-3-2020 to 30-8-2020 was extended till 31-8-2020. Since the present appeal was filed within the extended time, neither any request for condonation of delay nor any justification regarding the same was given.

ii. The appellant has submitted proof regarding the fact that subsequent adjustment have not been made in further returns by submitting Annexure A statement for comparison of taxable value of outward supplies and tax between GSTR 3B and GSTR 1 and books of accounts from October 2017 till August 2020 which shows that no adjustment have been made in any subsequent GSTR3B and the values match with those reported in GSTR 1 and the books of accounts. Also copy of GSTR 3B returns, GSTR 9 and GSTR 9C returns for the FY 2017-2018, 2018-2019, 2019-2020 showing values as per audited annual books of accounts and GSTR 9. GSTR 9 return reflect correct value which should have been in place had the mistakes not been made in filing the returns whether GSTR 3B or GSTR 1.

5. I have carefully gone through the facts of the case, grounds of appeal and impugned Order passed by the adjudicating authority. The short point to be decided in this appeal is whether the excess tax paid by the appellant is refundable to the appellant or the claim made by the appellant merit rejection as ordered by the adjudicating authority.

6. Before proceeding on the merits of the case I find that the impugned order was communicated to the appellant on dated 9-1-2020 and the appeal was filed on dated 31-8-2020 ie after eight months' period. 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. However, 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 the present is not hit by limitation factor prescribed under Section 107 of CGST Act, 2017.

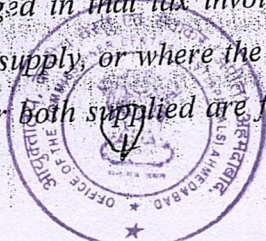
7. Regarding merits of the case, at the outset I find that there is no dispute with regard to excess payment of tax and admissibility of refund. The adjudicating authority in the impugned Order held that such excess payment of tax is to be allowed by way of adjustments in subsequent months as clarified in CBIC Circular No.26/26/2017-GST dated 29-12-2017 and not to be refunded whereas the appellant has claimed refund of the same as they were not in a position to make adjustments in subsequent months.

8. In order to have better appreciation of the facts, I reproduce the relevant para of Circular No.26/26/2017-GST dated 29-12-2017.

Para 4.4. 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 along with 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.

9. The above circular clarifies the manner of adjustment of output tax liability or input tax credit by way of adjustment in subsequent months. It also provides for refund of tax in circumstances where such adjustment is not feasible. In this regard, I also refer to Section 34 (1) of CGST Act, 2017 which provide as under :

(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:

10. In the subject case, the appellant has issued credit notes for the supplies made in October 2017 and the value of same was reduced from the taxable value of outward supplies. However, IGST involved on those supply was mistakenly added instead of reducing the same which lead to excess tax liability of Rs.1,38,536/-. The appellant contended that the excess payment was noticed in December 2019 while preparing annual return for the FY 2017/2018 and by that time the time limit for making adjustment in subsequent months has expired due to which it is not possible to make adjustment of excess paid tax in subsequent months and hence they may be granted refund in terms of above referred Circular. In this regard, I find that the purpose for preparation and submission of annual returns itself is for rectifying and regularizing any information or details left out or any mistake/error made in the periodical returns. Further 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 by making payment but also for any excess payment of tax noticed at the time of reconciliation by way of filing of refund application. Therefore, I find that there is strong possibility in appellant's submission of detecting excess payment of tax while preparing annual return in December 2019. It is also observed that the claim was filed in December 2019 and by that time the time limit prescribed under Section 34 of the Act for making adjustment has already expired. Even then, in the show cause notice the appellant was asked to make adjustment of excess duty paid in subsequent months and on failure to do so the claim was rejected. Hence, I do not find any logic or rationale in asking the appellant to make adjustment of excess paid tax in subsequent months after expiry of prescribed time period.

11. I further find that the appellant has also requested to grant benefit in terms of sub rule 4(A) of Rule 86 of CGS Rules, 2017. In this regard, I refer to said Rule and Board's Circular No.135/5/2020 GST dated 31-3-2020 issuing guidelines for grant of refund 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 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."

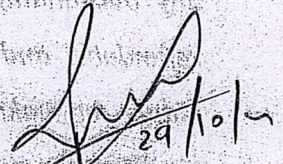
4.4 The combined effect the abovementioned changes is that any such refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic 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.

13. As per sub rule (4A) of Rule 86 of CGST Rule 2017 and clarification issued by the Board, 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. Thus, in case of wrong or excess payment of tax, provision is made under GST Law for giving benefit of such wrong/excess paid tax, either by way of adjustment in subsequent months or by way of re-credit in electronic credit ledger, if debited from electronic credit ledger or by way of refund, if found admissible. In other words, such wrong or excess paid tax cannot be withheld and the benefit of the same should be given back to the assessee's, if found admissible. In the subject case, as per records, there is no dispute regarding excess payment of tax or admissibility for its benefit. However, in the show cause notice issued to the appellant, the appellant was categorically asked

to gain the benefit of excess amount of tax paid by them by way of adjustment in subsequent months and due to non compliance of such action, the adjudicating authority has rejected their refund claim. The order implies that the appellant was given option of avail substantial benefit due to them by way of adjustment method only and the other options otherwise available to them were not kept open and considered. Since the claim was filed under Section 54 of the CGST Act, 2017, the claim needs to be processed invariably in accordance with provisions contained under said Section and guidelines issued by the Board. The stipulation to make adjustment of excess tax payment in subsequent months is to be exercised within the prescribed time limit but it should not be considered as a mandatory requirement for claims filed under Section 54 of the Act or for denying substantial benefit due to the claimant. Hence I do not find any justification in summarily rejecting claim of the appellant on their failure to make adjustment in subsequent months. Therefore I find that impugned order passed by the adjudicating authority is devoid of any merit. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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


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

  
29/10/20

(Mihir Rayka)  
Joint Commissioner (Appeals)

Date :

Attested



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



By RPAD

To,

M/s. Shree Balaji Fashion,  
E-53 Sumel Business Part 1,  
Behind New Cloth Market,  
Ahmedabad 380 002

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 Deputy Commissioner, CGST, Division I Rakhial, Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file