



आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

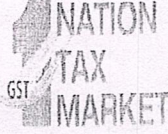
Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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रजिस्टर्ड डाक ए.डी. द्वारा

(DIN:-_20210564SW000000EEAB)

क फाइल संख्या : File No : GAPPL/ADC/GSTP/168/2020 /1591 TO 1592

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-06/21-22

दिनांक Date : 21-05-2021 जारी करने की तारीख Date of Issue : 16/06/2021

श्री मोहित अग्रवाल, अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No ZU2401200086978 दिनांक: 09.01.2020 issued by Deputy Commissioner, Central GST, Division-I, Ahmedabad-South

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

M/s . Shrikant Jain(Trade Name M/s Shreë Balaji Fashion, E-53, Sumel Business Park-1, Behind New Cloth Market, Outside Raipur Gate, 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) 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

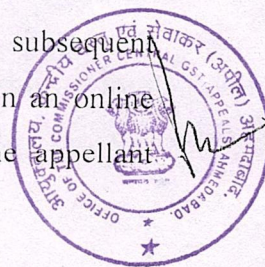
This appeal has been filed by Shrikant Jain (Trade Name M/s Shree Balaji Fashion) at E-53, Sumel Business Park-1, Behind New Cloth Market, Outside Raipur Gate, Ahmedabad-380002 [hereinafter referred to as 'the appellant'] under sub-section (1) of Section 107 of CGST Act, 2017 against Refund Rejection Order No. ZU2401200086978 dated 09.01.2020 [hereinafter referred to as 'the impugned order'] passed by Deputy Commissioner of CGST, Division-I, 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 24AEBPJ2862A1Z5. The appellant has applied for refund amounting to Rs. 1,38,536/- dated 05.12.2019 for the period November 2017 on account of excess payment of tax under Section 54 of the CGST Act. The bifurcation of the refund amount is as follows:

- I. IGST amounting to Rs. 1,35,530/- : The appellant has submitted that instead of reducing an amount of Rs. 13,52,534/- from the taxable value of outward supplies, they added the said amount to the taxable value of outward supplies;
- II. CGST and SGST amounting to Rs. 1,473/- each: The appellant has submitted that they have wrongly added the taxable value of the debit notes amounting to Rs. 58,927/- issued by the appellant to their suppliers to the taxable value of outward supplies. Hence, instead of reversing the input tax credit by such amount they have wrongly added the said amount to the CGST/SGST on outward supplies.

The appellant has filed a return in Form GSTR-3B of the month of November 2017 on 23.12.2017. Further, Form GSTR-1 was filed on 17.01.2018. The appellant has submitted that they have noticed their mistake during the month of December, 2019 on comparison of values shown in GSTR-1 and GSTR-3B, as a part of their working on the preparation of annual return for the F.Y. 2017-18. Hence, filed the refund claim dated 05.12.2019.

Show Cause Notice dated 17.12.2019 was issued by the adjudicating authority to the appellant wherein the claim for refund was proposed to be rejected under Rule 92 of the CGST Rules, 2017. The ground of proposed rejection was that the appellant could have adjusted/reduced such over reported liability in the returns filed for the subsequent months as mentioned in Circular No. 26/26/2017-GST dated 29.12.2017. In an online reply dated 28.12.2019 to the above mentioned Show Cause Notice, the appellant



submitted that they opined that the time period specified for rectification/adjustment, as given in proviso to sub-section(9) of Section 39 of the CGST Act, 2017, had expired hence, any adjustment was not feasible. Further, they have submitted in their online reply that the return filed in GSTR-9 also shows the excessive payment of tax.

The refund claim amounting to Rs.1,38,536/- was rejected vide the impugned order by the adjudicating authority on the ground that "The claimant has not established about subsequent adjustment/utilization of the claimed amount"

3. Being aggrieved with the impugned order, the appellant preferred this appeal dated 31.08.2020 on the following grounds:

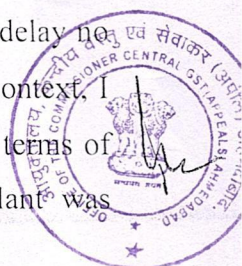
- a. The legal provisions as given in sub-section (9) of CGST Act, 2017, Circular No. 26/26/2017-GST dated 29.12.2017 and sub-rule (4A) of the rule 86 of the CGST Rules, 2017 have been overlooked by the adjudicating authority while deciding the case;
- b. The reasons and arguments put forward by the appellant were not fairly considered by the adjudicating authority;

4. Virtual Hearing in the case was fixed on 31.03.2021. Shri Jaydeep Saharan, Chartered Accountant attended hearing on behalf of the appellant and reiterated submissions made in appeal memorandum. They have also requested to consider their request.

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 the appellant is eligible for refund under Section 54 of the CGST Act, 2017 and Circular No. 26/26/2017-GST dated 29.12.2017.

6. The appellant has submitted that they opined that the time period specified for rectification/adjustment, as given in proviso to sub-section(9) of Section 39 of the CGST Act, 2017, had expired hence, any adjustment was not feasible. However, they did not submit any document(s)/proof evidencing or establishing the same.

7. It is observed that the appeal against Order-In-Original (RFD-06) dated ZU2401200086978 dated 09.01.2020 has been preferred by the appellant on 31.08.2020 i.e. after more than 7 month and 20 days. Thus, the appeal is not filed within the time limit of three months as prescribed under Section 107 of the CGST Act, 2017. In the statement of facts (GST APL-01), the appellant neither pray for condonation of delay nor given any justification supported by any statute of such lengthy delay. In this context, I observe that in such cases of delay in filing appeal, the Appellate Authority, in terms of Section 107(4) of the CGST Act, 2017, on being satisfied that the appellant was



prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, may allow it to be presented within a further period of one month but have instant case, the appeal in not presented within such further period of one month as provided in the law. Therefore, the period of condonation of delay is not within my competency limit of one month available under Notification No.35/2020, Central Tax dated 03.01.2020 and Notification 55/2020, Central Tax dated 27.06.2020 on account of spread of pandemic COVID-19, the total period from 20.03.2020 to 31.08.2020 have been protected under the said notifications. Since, the appeal was not filed before the expiry of such further extended date i.e. before 31.08.2020, the relaxations provided under both the said notifications jointly, can not help to the delay in present appeal. Therefore, the appeal filed by the appellant is liable for rejection on the grounds of non compliance of time limit mandated under Section 107 of the Central Goods and Service Tax Act, 2017.

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

Mohit Agrawal 21/5/24

(MOHIT AGRAWAL)

Additional Commissioner,
CGST (Appeals), Ahmedabad.



Attested

Superintendent

Superintendent (Appeals)

Central GST, Ahmedabad

By Regd. Post A. D

Shrikant Jain (Trade Name M/s Shree Balaji Fashion)

E-53, Sumel Business Park-1,

Behind New Cloth Market, Outside Raipur Gate, Ahmedabad-380002

Copy to :

- 1 The Chief Commissioner, CGST, Ahmedabad.
- 2 The Principal Commissioner CGST, Ahmedabad-South.

3. The Deputy /Asstt. Commissioner, CGST, Division-I, Ahmedabad-South.
4. The Deputy/Asstt. Commissioner (Systems), CGST, Ahmedabad-South.
- ✓ 5. Guard file
6. PA File

