

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 ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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टेलिफैक्स 07926305136

**DIN-20211164SW0000006638**

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/172/2020-APPEAL /MM 64 TO MM 69
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-61/2021-22
दिनांक Date : 01-11-2021 जारी करने की तारीख Date of Issue : 10-11-2021

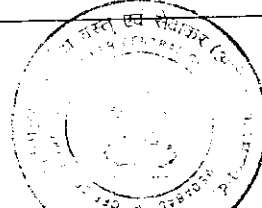
श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **ZS2402200219468** दिनांक: 18-02-2020 issued by
Assistant Commissioner, Division-VI, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Jintech Solutions Limited
5, Jamuna, Ganga Jamuna Complex, Opp.
Hotel Nest, C.G. Road, 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 .



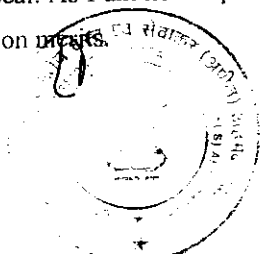
ORDER IN APPEAL

M/s.Jintech Solutions Ltd., 5, Jamuna, Ganga Jamuna Complex, CG Road, Ahmedabad – 380 009 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 31-8-2020 against Order No. ZS2402200219468 dated 18-2-2020 (hereinafter referred to as 'the impugned Order') passed by the Assistant Commissioner, CGST, Division VI, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. The brief facts of the case are that the appellant are registered under GST Reg.No.24AACCJ1660N1ZI. The appellant has filed refund claim of Rs.47,75,807/- on dated 20-12-2019 for refund of unutilized input tax credit on account of inverted tax structure for the period January 2019 to March 2019. The appellant was issued show cause notice number ZU24012200174101 dated 16-1-2020. The adjudicating authority vide impugned order has rejected the refund claim on the ground that the appellant has not submitted any reply in relation to SCN.

3. Being aggrieved, the appellant filed the present appeal on the following grounds: In response to their refund claim, they had received communication for submission of two additional documents only and no other reasons were made known to them as to why the claim is liable for rejection. In other words, no show cause notice in Form GST RFD 08 was issued to them. The adjudicating authority has completely erred in rejecting their refund claim without putting the appellant to notice ; that principals of natural justice has not followed in their case ; that the adjudicating authority has not followed the sequence prescribed under CGST Rules, 2017 for processing refund application ; referring to various case laws the appellant submitted that the Order issued by the adjudicating authority is in gross violation of settled law with regard to principle of natural justice ; that they had received an email message conveying that their refund claim is liable to rejection but does not convey as to whether the claim is rejected or not ; that the action of rejecting their refund claim is entirely baseless and without following any of the procedure prescribed under Section 54 of CGST Act, 2017 or Rules made thereunder. In view of above, the appellant requested to set aside the impugned Order and consider their refund application.

4. The appellant was given opportunity of Personal hearing on dated 11-10-2021, 14-10-2021 and 21-10-2021. However, on any of the dates either the appellant or their authority representative appeared for personal hearing. Therefore, it seems that the appellant do not wish to avail the opportunity of personal hearing. As per proviso to sub section 9 of Section 107 of CGST Act, 2017, no adjournment shall be granted more than three times to a party during hearing of the appeal. As I am not empowered to grant more than three adjournments, I proceed to decide the case on merits.



5. I have gone through the facts of the case, grounds of appeal and documents submitted with the appeal. The short issue to be decided is whether in this case, the refund application is processed and rejected in accordance with the provisions of Law or otherwise by issue of prescribed Forms.

6. Before proceeding on the merits of the case I find that the impugned order was communicated to the appellant on dated 18-2-2020 and the appeal was filed on dated 31-8-2020 ie after more than six 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 appeal is not hit by limitation factor prescribed under Section 107 of CGST Act, 2017.

7. With regard to appellant's submission against rejection of their refund claim I find that the provisions under CGST Rules, 2017 providing procedures for processing of refund claims is as under :

Rule 89. (1) Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Rule 90 (1) :Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in **FORM GST RFD 02** shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

Rule 90 (3): Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in Form **GST RFD 03** through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

Rule 92 (3) : Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in **FORM GST RFD 08** to the applicant, requiring him to furnish a reply in **FORM GST RFD 09** within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in **FORM GST RFD 06** sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed.

8. It is seen that right from filing of refund claim till the final disposal of the claim, all the prescribed actions are to be done electronically by issue of prescribed Forms. The appellant's contention is that they were not been issued show cause notice in Form GST RFD 08 and that they received rejection order through system generated email only. In order to ascertain the factual position, I have tracked their refund application status in GST portal wherein the application status was shown as under :

Basic Details

ARN	AA241219051247B
Type of ARN	Refund
Category	Refund on account of ITC accumulated due to Inverted Tax Structure
ARN Date	20/12/2019
Jurisdiction Information	CENTER

Case History

Action	Date	Action By	Document Reference Number
Refund Application filed in RFD-01	20/12/2019	Taxpayer	NA
Bank Account Details sent to PFMS for validation	20/12/2019	GST System	NA
Bank Account validated by PFMS	20/12/2019	PFMS	NA
Acknowledgement issued in RFD-02	06/01/2020	Tax Officer	ZZ2401200031001
Show Cause Notice Issued in RFD-08	16/01/2020	Tax Officer	ZU2401200174101
Reply not given- Pending for Order	16/01/2020	-	ZU2401200174101
Refund Rejected in RFD-06	18/02/2020	Tax Officer	ZS2402200219468

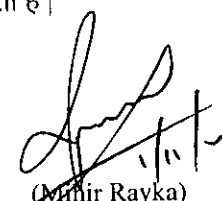
9. The above status clearly shows that after receipt of refund application the appropriate authority has issued acknowledgement in RFD 02 on 6-1-2020 ; issued show cause notice in Form RFD 08 on 16-1-2020 and refund rejection order in Form RFD 06 18-2-2020. Thus, I find that procedures contained under CGST Rules, mentioned above, have been followed in processing their refund application. Therefore, I do not find any lapse on the part of adjudicating authority for not issuing any Forms as contended by the appellant. Since, as per the provisions of CGST Rules, all the above actions are undertaken electronically the appellant is supposed to monitor their application status in their registered portal. Had it been done the appellant could have been able to file reply to the notice. I find that no valid reason is given in the appeal for not doing so. Moreover, the appellant's submission is also silent with regard to any grievance raised at the material time for not able to have access or to download the Forms. However, on being aggrieved with the rejection order the appellant has filed the present appeal pointing out lapse on the part of the adjudicating authority for not issuing notice and rejection order in prescribed Forms and rejecting their claim without observing the principles of natural justice. I find that the submission made by the appellant is factually wrong and misleading. In view of above, I do not find any merit in the appeal and accordingly I reject the appeal filed by the appellant.

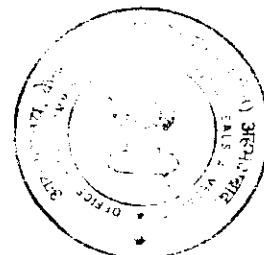
अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Date :
Attested

(Sankar Ranjan B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad


(Mihir Rayka)
Joint Commissioner (Appeals)



By RPAD

To,

M/s Jintech Solutions Limited

5, Jamuna, Ganga Jamuna Complex, Opp.

Hotel Nest, C.G. Road, Ahmedabad-380009

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/Assistant Commissioner, CGST, Division VI, Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

