

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  
 07926305065- टेलीफैक्स 07926305136



**DIN-20211164SW000061666D**

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/640/2020-APPEAL /5962 T o 5967  
 ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-65/2021-22**  
 दिनांक Date : **15-11-2021** जारी करने की तारीख Date of Issue : **17-11-2021**

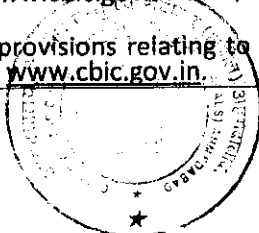
**श्री मिहिर रायका** संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **ZO2409200103154** दिनांक: **08-09-2020** issued by  
 Deputy Commissioner, CGST, Division VI- Vāstrapur, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**M/s. M.S. Khurana Engineering Ltd. Near Kashiram Rana Bhavan,**  
**II Floor, MSK House, Panjarapol, Ambawadi, Ahmedabad-380015**

(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) <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.M.S.Khurana Engineering Ltd., Near Kashiram Rana Bhavan, II Floor, MSK House, Panjarapol. Ambawadi, Ahmedabad (hereinafter referred to as 'the appellant') has filed the present appeal on dated 27-11-2020 against Order No.ZO2409200103154 dated 8-9-2020 (hereinafter referred to as 'the impugned Order') passed by the Deputy Commissioner, CGST, Division VI (Vastrapur), Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated that fact of the case is that the appellant is registered under GSTIN 24AABCM4514F1ZY. The appellant had filed refund claim for Rs.55,60,696/- in respect of supply made to SEZ Unit/SEZ developer with payment of tax for the period February-March 2020. The appellant was issued a show cause noticed on dated 19-8-2020 on the following grounds :

*During the scrutiny of RFD 01 application, this Office noticed following discrepancies :*

- 1) *Invoice number and invoice date shown in Statement not matched with invoices. Invoice submitted by the claimant not pertains to the relevant period (claim filed for Feb 2020 to March 2020)*
- 2) *No supply shown in outward taxable supplied (zero rated) in GSTR 3B for the month of February 2020*

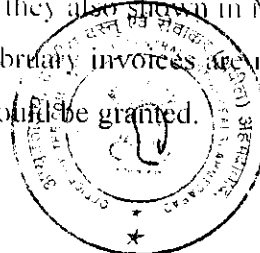
*In view of the above, you are show caused as to why your refund claim should not be rejected.*

3. In response to show cause notice the appellant filed reply stating the reason that while filing GSTR3B returns by mistake turnover of SEZ supply was shown in 3.1.a instead of 3.1.b accordingly there was no turnover while was reflected in 3.1.b of February but the said mistake was rectified in GSTR 3B return of March. The adjudicating vide impugned order has rejected the refund claim on the following reasons :

*I find that the claimant claimed refund for the period from February 2020 to March 2020 while invoices submitted by the claimant whose details in Statement 4 is not in accordance with the relevant period for which refund was filed ie. Invoice number and date shown Statement 4 not matched with invoices.*

4. Being aggrieved the appellant filed the present appeal on the following grounds :

- i. That there is no dispute regarding whether services are rendered to SEZ unit or not and only dispute is the adjudicating authority has not accepted their accounting method of booking this invoices
- ii. That they had invoice for the month of March 2020 which was approved by SEZ authority in the month of May 2020 and they also shown in May 2020 return. In that case if their October, November, January, February invoices are not accepted then, invoice of March should be accepted and refund should be granted.



- iii. That they are claiming refund of IGST paid in return and hence there is no loss to revenue, whether they claimed refund in October 2019 to February return. Moreover said IGST liability is discharged by debiting electronic credit ledger of the appellant which means that the appellant has sufficient ITC balance lying at their end to discharge their IGST liability.
- iv. That refund is granted for October 2019, November 2019, January 2020 and February 2020 invoices in February 2020 and March 2020 return or in respective month, there will not have impact of tax or interest in either case, moreover there is no loss to revenue in either case, in fact it is loss to appellant by claiming refund late.
- v. That if this refund is not granted for invoice number 13, 14, 15 and 16, then an alternately refund of invoice number 17 should be granted which pertain to March 2020 as the value of invoice is less than that the value shown in February and March 2020 returns.
- vi. In view of above, the appellant requested to quash and set aside the impugned order and grant refund of IGST : to accept method of accounting for showing RA bills as refund is claimed after payment of IGST : alternately grant them refund for the invoice pertains to March 2020.
5. Personal hearing was held on 21-10-2020. Shri Priyam R Shah, Authorized representative and Shri Arpit (Accountant) appeared on behalf of the appellant on virtual mode. They stated that they have nothing more to add to their written submission dated 27-11-2020.
6. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. In this case, the appellant has claimed refund of Rs.55,60,696/- on supply made to M/s.ONGC Petro Additions Ltd., a SEZ Unit on payment of IGST under following invoices :

Sr No.	Invoice Number	Invoice date	Taxable value	IGST
1	RA Bill No.13	15-10-2019	54,09,472/-	9,73,704/-
2	RA Bill No.14	20-11-2019	38,90,779/-	7,00,340/-
3	RA Bill No.15	21-1-2020	1,38,30,926/-	24,89,567/-
4	RA Bill NO.16	24-2-2020	77,61,581/-	13,97,085/-
				55,60,696/-

7. The claim was filed for the period February 2020-March 2020. The adjudicating authority vide impugned order has rejected the claim on the sole ground that the invoices submitted by the appellant as per Statement 4 is not in accordance with the relevant period for which refund was filed. In this regard, I have verified the reply given to the show cause notice and submissions made in appeal and find that ground put forth by the appellant for filing the claim for the period February and March 2020 in respect of invoices issued during October 2019

to February 2020 is justifiable. I further find that, except mismatch in the details invoices mentioned in the Statement 4 and claim period, no other grounds having bearing on admissibility of refund viz payment tax, clearance to SEZ unit, time limit for filing refund, non submission of documents etc are in dispute which imply that the refund is otherwise found admissible. Therefore, I find that the reasoning given in the impugned order for rejecting the claim does not appear to be cogent and valid reason so as to deprive the appellant from substantial entitlement.


8. In this regard, I refer to Circular No. 37/11/2018-GST F. No.349/47/2017-GST dated the 15th March, 2018, issued by the Board, wherein it was clarified that refunds may not be withheld due to minor procedural lapses or non-substantive errors or omission.

9. I also rely upon decision of Hon'ble CESTAT, Chennai passed in Service Tax Appeal No.40599-2017 dated 20-7-2021 in the case of M/s.Origin Learning Solutions P.ltd., wherein it was held that *it is not in dispute that the appellants are eligible for credit to the tune of Rs.16,93,074/- on the service tax paid by them under the reverse charge mechanism on input services availed by them. The only reason for denying the credit is that they have not reflected such availment of credit in ST-3 returns for July 2013 to September 2013. The services having been exported, the service tax paid on the input services used for export of services should be refunded to the appellants as per Rule 5 of Input Credit Rules, 2004. The appellants have properly accounted in their books of Account. Not mentioning the credit availed in ST3 returns is only a procedural lapse which can be condoned*

10. In accordance with above clarification and case law I hold that substantial benefit cannot be denied on procedural lapse, error or omission. Further no authority of Law, stipulating to file refund claim for a period only for tax paid under invoices issued on that period, is quoted to reject the claim. Accordingly, I find no justification to deny refund to the appellant merely due to mis-match in period of claim and period of invoices given Statement 4. Therefore, I find force in the grounds under which the present appeals are filed. Accordingly, I allow the appeals and dismiss the impugned Orders passed by the adjudicating authority.


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

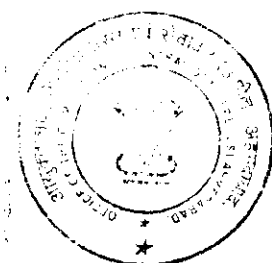
11. The appeals filed by the appellant stands disposed of in above terms.

  
(Mihir Rayka)  
Joint Commissioner (Appeals)

Date :

Attested

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



By RPAD

To,

M/s. M.S. Khurana Engineering Ltd.  
Near Kashiram Rana Bhavan,  
II Floor, MSK House, Panjarapol,  
Ambawadi, Ahmedabad-380015

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

