



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 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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क फाइल संख्या : File No : GAPPL/ADC/GSTP/650/2021-APPEAL / 5000 T.O 5005

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-81/2021-22**

दिनांक Date : **08-12-2021** जारी करने की तारीख Date of Issue : **09-12-2021**

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **ZN2404200248037 DT. 13.04.2020**

issued by Assistant Commissioner, CGST, Division III, Ahmedabad South

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

**The Assistant commissioner, CGST, Division-III, Ahmedabad South,**

**GST Bhavan, Revenue Marg, 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**

The Assistant Commissioner, CGST, Division III, Ahmedabad South (hereinafter referred to as 'the appellant') has filed the present appeal on dated 12-11-2020 against Order No ZN2404200248037 dated 13-4-2020 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, CGST, Division III, Ahmedabad (hereinafter referred to as 'the adjudicating authority'), sanctioning refund of Rs.3,58,460/- in favor of M/s.Gaurav Chandubhai Pokar, Survey No.49-1, At. Dhamtvan, Ta.Daskroi, Ahmedabad 382 435 (hereinafter referred to as the 'respondent').

2. Briefly stated the fact of the case is that respondent has filed refund claim for Rs.3,58,460/- for the month of January 2018 to March 2018 on dated 2-4-2020 in terms of CBIC Circular No.17/17/2017-GST dated 15-11-2017 on account of ITC accumulated due to inverted tax structure. After due verification the adjudicating authority vide impugned order has sanctioned the claim of Rs.3,58,460/- to the respondent.

3. On verification of impugned order during post audit by the Department it was observed that the respondent has filed claim under the category 'ITC accumulated due to inverted tax structure' for the tax period from January 2018 to March 2018, but claim was filed after expiry of due date in view of sub section (1) of Section 54 of CGST Act, 2017 read with Notification NO.2/2019-Central Tax dated 29-1-2019 read with CGST Amendment Act, 2018. Therefore the appellant has filed the present appeal on the basis of following grounds :

- i. That the claim is time barred in view of sub section (1) of Section 54 of CGST Act, 2017 read with Notification NO.2/2019-Central Tax dated 29-1-2019 read with CGST Amendment Act, 2018 ;
- ii. That the adjudicating authority has failed to consider the relevant date for filing the refund claim ;
- iii. That as per Section 54 of CGST Act, 2017, the due date of filing of refund claim will be two years from due date of the furnishing of return ie on or before the twentieth day of succeeding month ;
- iv. That the refund claim was filed on 2-4-2020 for the period January 2018 to March 2018, while refund claim for January 2018 can be filed on or before 19-2-2020 and for the month of February 2018 on or before 19-3-2020 ie within two years from the due date for furnishing of return under Section 39 (1) of CGST Act, 2017 ;
- v. That in view of above, the adjudicating authority has erred in sanctioning refund claim to the respondent without considering the time limit of filing of refund claim.

4. In view of above grounds the appellant prayed to set aside the impugned order passed by the adjudicating authority and to pass an order directing the adjudicating authority to recover and appropriate the amount erroneously refunded to the claimant with interest.

5. Personal hearing was held on 30-1-2021. No one appeared on behalf of appellant. Shri R.D.Patel, Authorized Representative appeared on behalf of respondent on virtual mode. He told that his letter dated 16-8-2021 may be considered along with all the documents submitted till date.

6. The respondent vide letter dated 16-8-2021 addressed to Assistant Commissioner, CGST, Division III, Vatva interalia submitted

- i. That they had applied for refund for Rs.5,76,000/- for the period July 2017 to March 2018 on dated 3-1-2020 against which they were issued deficiency memo dated 16-1-2020. At the time of the first application the period from January 2018 to March 2018 has not been completed for two years. However their application has been rejected. They had re-applied on the portal which was not properly working. They had filed second application on dated 2-4-22020 for Rs.3,58,460/- for the period January 2018 to March 2018 and the time limit of which has been renewed consider the date of old application
- ii. That Rule 90 (3) of CGST Rules, 2017 provides that where the officer notices deficiency in the refund application the same will be communicated to the refund applicant in Form GSTR RFD 03 asking the claimant to file a fresh refund application after rectification of such deficiencies. Circular No.125/44/2019-GST dated 18-11-2019 clarified at para No.12 that the filing of fresh refund application (after curing the deficiencies) must also be done within the limitation period of 2 years from the relevant date even though the original refund application has been filed within the said period.
- iii. A proviso has been added to Rule 90 (3) to provide that the time period from the date of filing of original application will the communication of deficiencies in Form RFD 03 shall be excluded for counting the limitation period of two years ;
- iv. None of the provisions of the Act provide for treating the rectified application as a fresh application for applying the limitation period;
- v. In a plethora of cases in the pre GST era the Tribunals have held that the date of filing of the first application is only required to be considered for applying the limitation period. The subsequent filing of the rectified application is merely a continuation of the claim already made and cannot be treated as a fresh claim.
- vi. Para 10 of Circular No.125/44/2019-GST dated 18-11-2019 clarifies that after a deficiency memo has been issued the refund application would not be further processed. Hence it is due to the limitations of the GSTIN Portal that the tax payer has been advised to file the refund application again after rectifying the deficiencies to enable the processing of the same on the portal. Therefore it cannot be construed that the date of filing of the rectified refund application shall have to be considered for applying the

limitation period since the same is done on account of the limitation of the portal and not of the Act ;

- vii. The amendment grants a fair procedural benefit to the claimants without curtailing or inflicting upon the existing rights of other tax payers. Hence as per Hon'ble Supreme Court's decision in the case of CIT Vs Vatika Township P.Ltd., (Civil Appeal No.8750 of 2014) the present amendment granting procedural benefit can be said to apply retrospectively from the inception (ie July 2017).

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the respondent and documents available on record. I find that in this case the appeal was filed to set aside the impugned order on the ground that the adjudicating authority has failed to consider that the application for refund was filed by the respondent was beyond the time limit prescribed under Section 54 of CGST Act, 2017 and thereby wrongly sanctioned refund to the respondent. In this regard I find that as per Section 54 of CGST Act, 2017 the time limit for filing of refund application is two years from relevant date. As per Clause (e) of Explanation to Section 54 relevant date in case of refund of unutilized ITC under clause (ii) of first proviso to sub section (3) is the due date for furnishing of return under Section 39 for the period in which such claim for refund arises. Accordingly in this case the due date of filing of refund claim for the month of January 2018 falls on 19-2-2020 and for the month of February 2018 falls on 19-3-2020 ie two years from due date of filing of return for the month of January 2018 and February 2018 which is 20-2-2018 and 20-3-2018 respectively. Therefore refund claim filed by the respondent on 2-4-2020 is beyond the stipulated time period.

7. However, the respondent contended that they had filed the first refund application on dated 3-1-2020 which was within the time limit. However, as a deficiency memo was issued and they had filed rectified application on dated 2-4-2020 and hence the date of filing of initial application is to be considered for determining the time limit. They had also contended that as per amendment made under Rule 90 (3) the period between date of filing of original application till communication of deficiencies shall be excluded for counting the limitation period of 2 years.

8. As per Rule 90 (3) of CGST Rules, 2017 where any deficiencies are noticed and communicated in Form GST RFD 03, the claimant is required to rectify the deficiencies and file fresh claim. In this regard CBIC vide Circular No. 125/44/2019-GST dated 18-11-2019 has clarified that since the refund claim filed after correction of deficiency is treated as fresh refund application, such a rectified refund application submitted after correction of deficiencies shall also have to be submitted within 2 years of the relevant date as defined in the explanation after sub section (14) of Section 54 of the CGST Act. The Circular was issued in exercise of powers conferred under Section 168 (1) of the Central Goods and Services Tax Act, 2017 for implementation of the CGST Act and hence it is binding on Department as well as on the registered persons. Therefore as per Rule 90 (3) read with Circular it is a statutory requirement to file the rectified refund application within the time limit prescribed under Section 54 of CGST

Act, 2017. Accordingly, for determining the time limit prescribed under Section 54 of the Act the date of filing of rectified refund application is to be considered and not date of filing of initial application as contended by the appellant.

10. I further notice that amendment under Rule 90 (3) providing exclusion of period between date of filing of original application till communication of deficiencies for computing the limitation period of 2 years was made vide Notification No.15/2021-Central tax dated 18-5-2021 which will come into force on the date of publication in the Official Gazette. Therefore, amendment made under Rule 90 (3) of CGST Rules, 2017 vide above Notification will also be in force from the date of publication in Official Gazette. In other words, the amendment is a prospective amendment. Since the subject claim pertains to the period prior to 18-5-2021 the amendment made under Rule 90 (3) is not applicable to the subject case.

11. Regarding case laws cited by the respondent I find that the issues covered in such cases relates to pre-GST era. The provisions governing processing of refund applications and time limit for filing of refund application under erstwhile Law and present GST law are entirely different. Therefore I do not find it apt to apply the ratio of decisions made in the case laws cited by the respondent to the subject case.

12. Regarding decision of Hon'ble Supreme Court in the case of CIT Vs Vatika Township P.Ltd., (Civil Appeal No.8750 of 2014) relied by the respondent, I find that in another case of M/s.L.R.Brothers Indo Flora Ltd. Vs CCE in Civil Appeal 7157 of 2008 Hon'ble Supreme Court has given an analysis of the observation made in Vatika Township case was given as under :

30. In *Vatika Township (supra)*, Constitution Bench of this Court has analysed the principle concerning retrospectivity. The appellant heavily relies upon the observation made at paragraph 30 of the decision, which reads thus:

*If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislator's object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect.*

The appellant clearly misinterprets the context of the above observation by reading the same in isolation. To have a better understanding of the said principle it is relevant to read the preceding and subsequent paragraphs. We may here refer to Paragraph 32 of the said decision which is extracted below :

32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labeled as "declaratory statutes". The

circumstances under which a provision can be termed as "declaratory statutes" is explained by Justice G.P. Singh[7] in the following manner:

"Declaratory statutes The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES and approved by the Supreme Court : "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word 'declared' as well as the word 'enacted'. But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law." The above summing up is factually based on the judgments of this Court as well as English decisions.

Upon reading the observations at paragraph 30 and juxtaposed with paragraph 32 it is crystal clear that an essential requirement for application of a legislation retrospectively is to show that the previous legislation had any omission or ambiguity or it was intended to explain an earlier act. In the absence of the above ingredients, a legislation cannot be regarded as having retrospective effect.

13. In view of above observation of Hon'ble Apex Court, I find that unless it is expressly provided that the legislature amendment was made to remove any omission or ambiguity or it was made to explain an earlier act, it cannot be given any retrospective effect as held in Vatika Township case. Further it is a well settled principle of Law that whenever any statute is newly added the same has got only prospective effect unless it is specifically provided in the amending statute or the amendment is by way of substitution of an existing provisions mainly by way of clarification or removal of defects. Therefore as per observation made by Hon'ble Supreme Court since the amendment made under Rule 90 (3) is not to rectify the earlier provisions, I hold

that the amendment made under Rule 90 (3) cannot be given retrospective operation as contended by the respondent.

14. In view of the above discussions, I hold that refund claim filed by the respondent on dated 2-4-2020 is beyond time limit prescribed under Section 54 of CGST Act, 2017. Hence, I find that the adjudicating authority has sanctioned refund to the respondent without considering the time limit factor and thereby erroneously sanctioned refund. Therefore, I set aside the impugned orders passed by the adjudicating authority sanctioning refund to the respondent and allow the appeal filed by the appellant. Consequently, I order recovery refund erroneously sanctioned to the respondent's along with interest under the provisions of CGST Act, 2017 and Rules made there under and corresponding SGST Act, 2017.

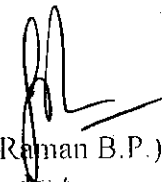
15. अपीलकर्ता द्वारा दर्ज की गई अपील को कानिपटारा उपरोक्त तरीके से किया जाता है।  
The appeals filed by the appellant stand disposed off in above terms.



(Mihir Rayka)  
Joint Commissioner (Appeals)

Date :

Attested



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

By RPAD

To.

The Assistant Commissioner,  
CGST Division III  
Ahmedabad South

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 Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 5) Shri Gaurav Chandubhai Pokar of M/s. Bhagwati Enterprises, Survey No.49/1,  
At Dhamatvan TA Daskroi, Ahmedabad 382 435
- 6) Guard File
- 7) PA file