



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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DIN-202112645W0000111DCB

रजिस्टर्ड डाक ए.डी. द्वारा

फाइल संख्या : File No : GAPPL/ADC/GSTD/76/2020-APPEAL / 5128 TO 5183  
अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-88/2021-22**  
दिनांक Date : **16-12-2021** जारी करने की तारीख Date of Issue : **16-12-2021**

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

Arising out of Order-in-Original No. **ZW2405200222961** DT. **25.05.2020**  
issued by Deputy Commissioner, CGST, Division V, Ahmedabad South

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

**Assistant Commissioner, CGST, Division V, Ahmedabad South**

(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> .



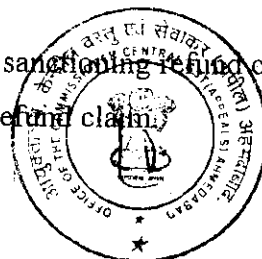
## ORDER IN APPEAL

The Assistant Commissioner, CGST, Division V, Ahmedabad South (hereinafter referred to as 'the appellant') has filed the present appeal on dated 20-11-2020 against Order No.ZW2405200222961 Dated 25-5-2020 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, CGST, Division V, Ahmedabad (hereinafter referred to as 'the adjudicating authority'), sanctioning refund of Rs.14,10,232/- in favor of Shri Manoj Shyamsundar Agarwal, M/s.Shree Metals, B-1, Radhika Residency, Odhav, Ahmedabad 382 415 (hereinafter referred to as the 'respondent').

2. Briefly stated the fact of the case is that respondent is registered under GSTIN 24AEDPA0855Q1ZI. The respondent has filed refund claim for Rs.14,10,232/- for the period June 2017 to March 2018 on dated 5-5--2020 as prescribed under 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 sanctioned the claim of Rs.14,10,232/- to the respondent.

3. On verification of the impugned Order, it was observed by the Department that the respondent has filed claim under the category 'ITC accumulated due to inverted tax structure' for the tax period from July 2017 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 as per Review Order No.22/2020-2021 dated 19-11-2020 the appellant has filed the present appeal on following grounds :

- i. That the adjudicating authority has failed to consider the relevant date for filing the refund claim ;
- ii. 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 ;
- iii. That the refund claim was filed on 5-5--2020 for the period July 2017 to March 2018 while refund claim for July 2017 can be filed on or before 19-8-2020 ; for August 2017 can be filed on or before 19-9-2019 ; for September 2017 can be filed on or before 19-10-2019 ; for October 2017 can be filed on or before 19-11-2019 ; for November 2017 can be filed on or before 19-12-2019 ; for December 2017 can be filed on or before 19-1-2020 ; for January 2018 can be filed on or before 19-2-2020 ; for February 2018 can be filed on or before 19-3-2020 and for March 2018 can be filed on or before 19-4-2020 ie within two years from the due date for furnishing of return under Section 39 (1) of CGST Act, 2017.
- iv. 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.



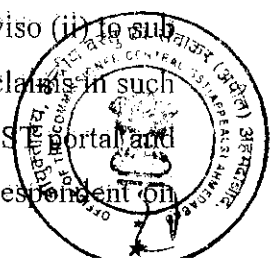
4. In view of above grounds the appellant prayed to set aside the impugned order passed by the adjudicating authority and to pass an order directing the adjudicating authority to recover and appropriate the amount erroneously refunded to the claimant with interest.

5. The respondent vide letter dated 21-12-2020 has submitted that during the claim period due to technical glitch GST dealer has not been able to file GSTR3B return in time and so the due date for the same has been extended for the period July 2017 to February 2019 till 31<sup>st</sup> March 2019 vide Notification No.69/018-CT dated 31-12-2018 by amending Notification No.35/2017 and Notification 16/2018-CT. Hence in the instant case the GSTR3B return filing date has been extended upto 31-3-2019 so limitation period of the refund claim will start from the date 31-3-2019. They had filed the claim on dated 5-5-2020 well in time as the time of limitation will start from 31-3-2019.

6. Personal hearing was held on dated 8-12-2021. No one appeared on behalf of the appellant. Shri Ronak Jain, Advocate and Authorized Representative appeared on behalf of the respondent on virtual mode. He stated that he wants to submit additional documents. He has been given three working days to do so.

7. Accordingly, the appellant vide letter dated 14-12-2021 filed additional submissions wherein they inter alia stated that regarding the limitation of filing of GSTR3B returns for the period July 2017 to February 2019 as per Notification No.69/2018 dated 31-12-2018 the due date for filing for the period July 2017 to February 2019 was extended to 31-3-2019 in the original Notification No.16 dated 23-3-2018. In the Notification No.69/2018 in the note a reference of Notification No.46/2018 dated 10-9-2018 was given wherein a proviso in the first paragraph of Notification NO.35/2017 dated 15-9-2017 and Notification No.16/2018 dated 23-3-2018 was inserted. The original first paragraphs of both the Notifications No.35/2017 and 16/2018 shall remain in the said Notifications and this proviso had been inserted over and above the original paragraph. Thus by issuing Notification No.46/2018 dated 10-9-2018 the status of original provisions of Notifications No.35/2017 and 16/2018 have not been changed and the same original provisions shall be effective and applicable to the persons concerned. In the same way the due date of filing of extended till 31-3-2019 by Notification No.69/2018 shall be applicable with respect to the first paragraph of both the Notifications No.35/2017 and 16/2018. In view of above legal interpretation of Act they submitted that the due date for filing of GSTR3B returns in their case was 31-3-2019 and all other limitations under the provisions of the Act shall be calculated on this basis.

8. I have carefully gone through the facts of the case, grounds of appeal, submission made by the respondent and documents available on record. The subject appeal was filed to set aside the impugned order passed by the adjudicating authority solely on the ground of time limitation ground. I find that in this case refund claim was filed by the respondent for refund of accumulated ITC on account of inverted tax structure which is governed under proviso (ii) to sub section (3) of Section 54 of CGST Act, 2017 and the due date for filing of refund claim in such cases is also governed under Section 54 of CGST Act, 2017. I have verified from GST portal and find that the claim bearing number ARN AA240520002778H was filed by the respondent on



dated 5-5-2020. Regarding due date for filing of refund claimed under sub section (3) of Section 54 of the Act, the provisions of Section 54, which existed on the date of filing of refund claim, prescribing due date is as under :

54. (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

*Explanation.—For the purposes of this section,—*

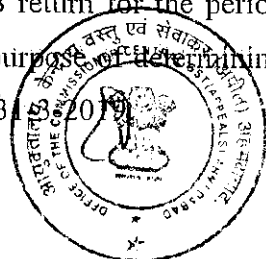
(2) "relevant date" means—

(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;".

9. As per explanation given under Section 54 of the CGST 2017 the relevant date is to be reckoned from due date for furnishing of return under Section 39 for the period in which such claim of refund arises and due date for filing of refund claims is before expiry of two years from the said date which is ascertained as under

Month	Due date of filing of return GSTR3B	Notification No. and date	Due date for filing refund claim as per Section 54 of CGST Act, 2017
July 2017	20 <sup>th</sup> August 2017	21/2017-CT dated 8-8-2017	19 <sup>th</sup> August 2019
August 2017	20 <sup>th</sup> September 2017	35/2017-CT dated 15-9-2017	19 <sup>th</sup> September 2019
September 2017	20 <sup>th</sup> October 2017	35/2017-CT dated 15-9-2017	19 <sup>th</sup> October 2019
October 2017	20 <sup>th</sup> November 2017	35/2017-CT dated 15-9-2017	19 <sup>th</sup> November 2019
November 2017	20 <sup>th</sup> December 2017	35/2017-CT dated 15-9-2017	19 <sup>th</sup> December 2019
December 2017	20 <sup>th</sup> January 2018	35/2017-CT dated 15-9-2017	19 <sup>th</sup> January 2020
January 2018	20 <sup>th</sup> February 2018	56/2017-CT dated 15-11-2017	19 <sup>th</sup> February 2020
February 2018	20 <sup>th</sup> March 2018	56/2017-CT dated 15-11-2017	19 <sup>th</sup> March 2020
March 2018	20 <sup>th</sup> April 2018	56/2017-CT dated 15-11-2017	19 <sup>th</sup> April 2020

10. In the subject case the claim for the period July 2017 to March 2018 was filed on 5-5-2020 which undoubtedly is beyond the due date prescribed under Section 54 of the Act as per table above. However, the respondent referring to Notification No.69/018-CT dated 31-12-2018, Notification No.35/2017 dated 15-9-2017, Notification 16/2018-CT 23-3-2018 and Notification No.46/2018 dated 10-9-2018 contended that due date for filing GSTR3B return for the period July 2017 February 2019 was extended till 31-3-2019 and hence for the purpose of determining due date for filing of refund application, the relevant date is to be taken as 31-3-2019.



11. I have examined the aforesaid Notifications and other Notifications relevant to the issue. I find that Notification No.21/2017 dated 8-8-2017 was issued prescribing the due date for filing of GSTR3B returns for the month of July 2017 and August 2017 on 20<sup>th</sup> August 2017 and 20<sup>th</sup> September 2017 respectively ; Notification No.35/2017 dated 15-9-2017 was issued prescribing due date for filing of GSTR3B returns for the period August 2017 to December 2017 on 20<sup>th</sup> day of succeeding month ; Notification No.56/2017 dated 15-11-2017 was issued prescribing the due date for filing of GSTR3B returns for the period January 2018 to March 2018 on 20<sup>th</sup> day of succeeding month and Notification No.16/2018 dated 23-3-2018 was issued prescribing due date for filing of GSTR3B returns for the period April 2018 to June 2018 on 20<sup>th</sup> day of succeeding month. Thereafter Notification No.45/2018 and 46/2018 both dated 10-9-2018 was issued inserting the following proviso in Notification No.21/2017 & 56/2017 and in 35/2017 & 16/2018, respectively.

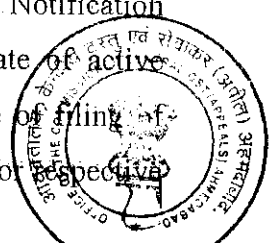
*In the said Notifications, in the first paragraph the following proviso shall be inserted, namely :-*

*"Provided that the return in Form GSTR3B of the said Rules to be filed for the period from July 2017 to November 2018 by the taxpayers who have obtained Goods and Service Tax Identification number (GSTIN) in terms of Notification NO.31/2018-Central Tax dated 6<sup>th</sup> August 2018 published in the Gazette of India vide number G.S.R742 (E) dated the 6<sup>th</sup> August 2018, shall be furnished electronically through the common portal on or before the 31<sup>st</sup> day of December 2018".*

12. The above proviso was further amended vide Notification No 68/2018-CT dated 31-12-2018 and 69/2018 dated 31-12-2018 prescribing the period from July 2017 to November 2018 to July 2017 to February 2019 and the due date from 31-12-2018 to 31-3-2019.

14. I have also gone through Notification No.31/2018-CT and find that vide said Notification special procedure to be followed for applying Goods and Services Tax Identification Number (GSTIN) by persons, who did not file the complete FORM GST REG26 of the Central Goods and Services Tax Rules, 2017 but received only a Provisional Identification Number (PID) (hereinafter referred to as "such taxpayers") till the 31st December, 2017, was notified.

13. In view of above amendments the first paragraph of Notifications No.21/2017, 56/2017, 35/2017 and 16/2018 covers tax payers who had already obtained GSTIN by 31<sup>st</sup> December 2017 and proviso to first paragraph covers tax payers who had obtained GSTIN in terms of Notification No.31/2018. In respect of persons covered in the first paragraph the due date for filing of GSTR3B returns will be as per the due date prescribed in the Table given to para 1 of aforesaid Notifications and in respect of persons who have obtained GSTIN in terms of Notification No.31/2018, the due date of filing GSTR3B for the period July 2017 to February 2019 was extended till 31<sup>st</sup> March 2019. In the subject case, the respondent has not brought on record as to whether they fall under the category of persons covered under Notification No.31/2018 or otherwise. I have verified from GST portal and find that the date of active registration of the respondent was 1-7-2017. Therefore in their case the due date of filing of GSTR3B returns will be as per Table given in first para of aforesaid Notifications for



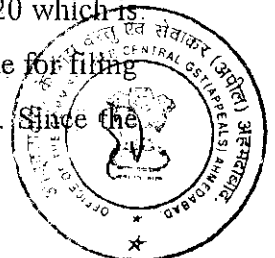
months. Hence, I find that the respondent has wrongly interpreted the aforesaid Notifications to the effect that the time limit for filing of GSTR3B returns extended till 31-3-2019 vide Notification No.69/2018 shall be applicable for all tax payers for the period July 2017 to February 2019 and hence their submission that due date for filing refund application is to reckoned taking into account the relevant from 31-3-2019 is not well reasoned and not tenable.

14. The respondent further submitted that in case of contrary view they should be given an opportunity of being heard. In the current proceedings the respondent was given opportunity for filing rejoinder to appeal filed by the Department and also given opportunity of being heard which were availed and complied by them. The issue is now before this authority for final decision. Therefore, in case the decision of this authority is found contrary to the submissions made by the respondent or the respondent is aggrieved with the decision, recourse is provided under Section 107 of CGST Act, 2017 by way of filing appeal before Hon'ble Tribunal as and when notified by the Government seeking relief. Therefore, I do not find it is legally required to intimate the respondent the decision to be taken beforehand and to give them another opportunity of being heard.

15. In view of above facts and discussions, I find that the refund claim filed by the respondent on dated 5-5-2020 was filed beyond the due date prescribed under Section 54 of the CGST Act, 2017. However, I find that due to Covid 19 pandemic prevailed in the Country, Notification No. 35/2020 dated 3-4-2020 was issued wherein it was clarified as under :

- (i) *where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 30th day of June, 2020, including for the purposes of-- (a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Acts stated above; or (b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above.*

16. The Notification No.35/2020 was further amended vide Notification No.55/2020 extending the time limit till 31-8-2020. In view of above, in respect of refund claims for which the due date for filing falls between 20<sup>th</sup> March 2020 to 30<sup>th</sup> August 2020, the due date for filing of refund claim was extended till 31-8-2020. In the subject case as per Table in para 9 above the due date for filing of refund claim for the month of March 2018 falls on 19<sup>th</sup> April 2020 which is within the period specified under Notification No.35/2020 and accordingly the due date for filing of refund claim for the month of March 2018 stands extended till 31<sup>st</sup> August 2020. Since the

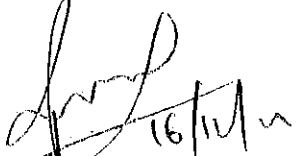


respondent has filed refund claim on dated 5-5-2020, I find that claim for the period March 2018 was filed within the extended time period as per Notification No.35/2020.

17. In view of above, I hold that claim for the month of Month 2018 was filed within the extended due date and hence I upheld the impugned Order and reject the appeal to the extent of refund sanctioned for the month of March 2018. In respect of claim for the period July 2017 to February 2018, I hold that the adjudicating authority has failed to consider the time limitation factor in filing refund claims and accordingly erroneously sanctioned refund to the respondent which is liable for recovery. Therefore, I set aside the impugned orders passed by the adjudicating authority sanctioning refund for the period July 2017 to February 2018 to the respondents and allow the appeal filed by the appellant to such extent. Consequently, I order recovery refund erroneously sanctioned to the respondent for the period July 2017 to February 2018 along with interest under the provisions of CGST Act, 2017 and Rules made there under and corresponding SGST Act, 2017.

अपीलकर्ताद्वारा दर्ज की गई अपील को कानिपटारा उपरोक्त तरीके से किया जाता है।


18. The appeals filed by the appellant stand disposed off in above terms.

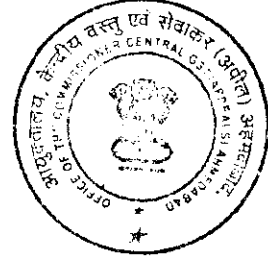
  
(Mihir Rayka)

Joint Commissioner (Appeals)

Date :

Attested

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



To,

The Assistant Commissioner,

CGST, Division V,  
Ahmedabad South

**Copy to:-**

1. The Chief Commissioner, Central Tax, Ahmedabad Zone..
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Commissioner, CGST (Appeals), Ahmedabad.
4. Shri Manoj Shyamsundar Agarwal, M/s.Shree Metals, B-1, Radhika Residency, Odhav, Ahmedabad 382 415
5. The Asstt. Commissioner, CGST (System), HQ, Ahmedabad South.  
(for uploading OIA on website)
- ✓ 6. Guard file.
7. P.A. File