



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-20211264SW0000444D88

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/649/2020-APPEAL / SKH TO SKP
 ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-89/2021-22**
 दिनांक Date : **16-12-2021** जारी करने की तारीख Date of Issue : **16-12-2021**

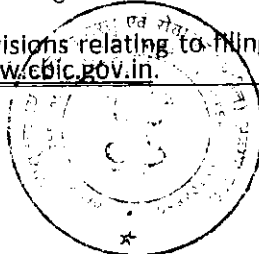
श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZP2410200040288 DT. 05.10.2020**
 issued by Astt. Commissioner, CGST, Division VIII-Vejalpur, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Novelgenix Therapeutics P. Ltd. 405A, Pinnacle,
Corporate Road, Prahladnagar, 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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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. Novelgenix Therapeutics P.ltd., 405A, Pinnacle, Corporate Road, Prahaladnagar, Ahmedabad 380 015 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 8-12-2020 against Order No. ZP2410200040288 dated 5-10-2020 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Division VIII (Vejalpur), CGST Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant is registered under GSTIN 24AADCN7166L1Z4. The appellant has filed refund application on dated 16-9-2020 for refund of IGST of Rs.3,36,756/- on export of service made with payment of tax). The appellant was issued show cause notice proposing rejection of the claim on the ground that the refund application was filed after expiry of two years from relevant date. The adjudicating authority vide impugned order rejected the refund claim as time barred.

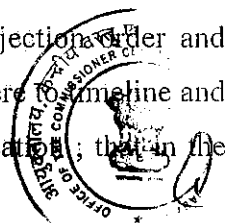
3. Being aggrieved the appellant filed the present appeal on the following grounds :

- i. That they are rendering consultancy services outside India being export of service during the period under consideration and they had paid IGST on export of service ;
- ii. That the adjudicating authority has rejected their claim without considering the genuine hardship to the appellant during the period of pandemic situation of COVID 19. That they had filed a reply to show cause notice stating the reasons for non filing of refund application in time.
- iii. That the adjudicating authority has passed the impugned order without considering the facts of the case.

4. In view of above grounds the appellant requested to pass appropriate order directing the adjudicating authority to issue refund to them.

5. Personal hearing was held on 8-12-2020. Shri Sandip Kshatriya, authorized representative appeared on behalf of the appellant on virtual mode. He stated that he wants to submit more documents for which he was given 3 working days to do so.

6. Accordingly the appellant submitted additional written submission via email dated 13-12-2021, wherein they inter alia submitted that that adjudicating authority has grievously rejected the refund of IGST paid on export of service for the month of August 2020 without considering the genuine hardship to the appellant during the period of Covid 19 pandemic ; that they had submitted reply to the SCN stating the reason being genuine hardship for non filing of refund application in time ie delay of 16 days which was on account of closure of offices during pandemic situation ; that they had filed reply to SCN online due to lockdown and unavoidable situation of Covid 19 ; that the adjudicating authority without considering the reasonable cause for such delay in filing application for refund and has grievously passed an order rejecting refund claim stating reason of non filing of refund application within two years from the date of payment of tax ; that they had filed appeal against the refund rejection order and considering the genuine hardship in the time of pandemic situation they could not adhere to timeline and once the offices has been resumed the appellant has as early possible filed the application ; that in the



case of M/s.W.S.Industries India Ltd Vs The Commissioner of Customs and Central tax, Visakhapatnam, where the facts of the case are identical and the Hon'ble Tribunal has condoned the delay in filing of refund application for genuine hardship to the appellant.

7. I have gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that the appeal was filed against order rejecting refund claim on the ground that the claim filed on dated 16-9-2020 was time barred. In this case the claim was filed for export of services made during the month of August 2018 and application for refund was filed on dated 16-9-2020. The time limit for filing of refund of tax paid on export of goods contained under Section 54 of CGST Act 2017 is as under :

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:*

(2) *"relevant date" means—*

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

(i) receipt of payment in convertible foreign exchange ² "or in Indian rupees wherever permitted by the Reserve Bank of India", where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

8. As per documents available on record the appellant has received payment in foreign exchange of Rs.27,412/- equivalent to INR 18,45,899/- on dated 8-8-2018. Therefore, the due date for filing of refund of tax paid on services exported by them falls on 7-8-2020 ie two years from 8-8-2018. The subject claim was filed on 16-9-2020 and thus there was delay of 39 days in filing the refund claim. However, I find that due to COVID Pandemic in the Country as per Notification No.55/2020-Central Tax dated 27-6-2020, time limit for completion of or compliance of any action by any authority or by any person has been specified in or prescribed or notified under CGST Act, which falls during the period from 20th day of March 2020 to 30th August 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, shall be extended upto the 31st day of August 2020. Accordingly the time limit for filing refund claim in this case stands extended till 31-8-2020. However even after considering the extended time period the claim filed on 16-9-2020 is time barred. It is also admitted by the appellant that there was delay of 16 days in filing refund application.

9. I further note that since the time limit for filing refund is prescribed by way of statute, it is binding on both the Departmental authorities and the registered person. Therefore, it is a statutory requirement on the part of the registered person to file the refund claim within such prescribed time limit and on failure to do so this authority is not empowered to condone the same. Therefore, I do not intend to accept the submissions made for delay in filing of refund in this case.

10. Regarding submission made referring to decision of Hon'ble Tribunal in the case of M/s.W S Industries India Ltd, supra to condone the delay in filing refund application, I have gone through the copy of order submitted by the appellant and find that the facts of the case and statutory provisions related to the said case are entirely different to the present case. In the said case the claim for refund was made for service tax paid on services under Notification No. 17/2011-ST dated 1st March 2011. Under the said Notification, the Assistant/Deputy Commissioner was given power to extend the time limit for filing of refund. In the said case, the adjudicating authority has found that the appellant had not produced sufficient grounds to him to exercise his discretion and condone the delay of almost 3 years in filing the refund claim and accordingly he rejected the refund claim in toto including what he held to be admissible on merits. However, in the subject case the claim was filed under Section 54 of CGST Act, 2017 read with Rules framed there under which does not provide any discretionary power to the adjudicating authority either to condone the delay or extend the time limit for filing of refund application. As a matter of fact in the above case law itself the Hon'ble Tribunal has observed that *the decisions relied upon by the learned A.R. pertain to claim of refund under Section 11B of the Central Excise Act and Section 27 of the Customs Act read with Notification No 102/2007 (SAD refund) which do not provide for any condonation of delay. In respect of such refund claims, the statutory time limit has to be adhered to and once the refund claim is hit by limitation, no refund claim could be sanctioned.* Therefore, contrary to Notification No.17/2011-ST, since CGST Act and Rules does not provide any discretionary power to the adjudicating authority either to condone the delay or extend the time limit for filing of refund application, I find that the decision rendered in the said case is not squarely applicable to the present appeal.

11. In view of above I find that the claim filed by the appellant 16-9-2020 was filed beyond the statutorily prescribed time period under Section 54 of the Act and hence the claim filed by the appellant is time barred. Therefore I do not find any infirmity in the impugned order passed by the adjudicating authority rejecting refund application on time limitation ground. Accordingly I upheld the order passed by the adjudicating authority and reject the appeal filed by the appellant.

12. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

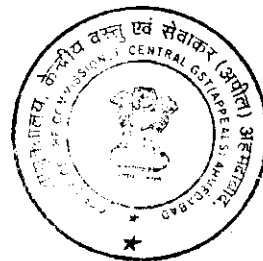
The appeals filed by the appellant stands disposed of in above terms.

Date :
Attested

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

To,
M/s.Noelgenix Therapeutics P.ltd.,
405A, Pinnacle, Corporate Road,
Prahaldnagar, Ahmedabad 380 015
Ahmedabad 380 015


(Mihir Rayka)
Joint Commissioner (Appeals)



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 VIII, Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

