



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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फाइल संख्या : File No : GAPPL/ADC/GSTP/646/2020-APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-91/2021-22**

दिनांक Date : **21-12-2021** जारी करने की तारीख Date of Issue : **22-12-2021**

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Joint Commissioner (Appeals)

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Arising out of Order-in-Original No **ZU2411200272245 DT. 23.11.2020**

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

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

**Shri Umesh Balkrishna Lavsi of M/s. Lavsi Cable Industries, L 21,
GIDC Estate, Odhav, Ahmedabad-382415**

(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

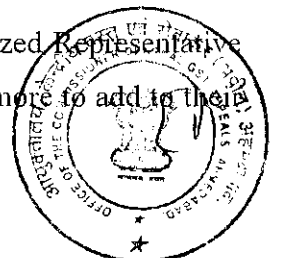
Shri Umesh Balkrishna Lavsi of M/s.Lavsi Cable Industries, L 21, GIDC Estate, Odhav, Ahmedabad 382 415 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 1-12-2020 against Order No.ZU2411200272245 dated 23-11-2020 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, Division V, Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant, registered under GSTIN 24AAGPL1273L1ZO, has filed refund claim for Rs.12519/- on dated 19-8-2020 for refund of excess balance in electronic cash ledger. The appellant was issued show cause notice asking them to furnish annual returns, reasons for excess payment of tax and copy of challans. The claim was rejected by the adjudicating authority vide impugned order on the ground 'Time bound matter. Reply to SCN not received within stipulated time'.

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

- i. That the adjudicating authority has failed to take note of Notification NO.49/2019 dated 9-10-2019 which makes filing of GSTR 9 Annual Return optional for turnover below Rs. 2 crores ;
- ii. The adjudicating authority has failed to check the documents and proofs which were uploaded in the portal together with the application.
- iii. That they were unable to reply to the scn within the stipulated time due to Covid 19 pandemic.
- iv. As per Notification No.47/2019 dated 9-10-2019 GSTR 9 (Annual Return) has been made option for dealers whose aggregate turnover is below 2 crore for the FY 2017-2018 and 2018-2019. Moreover annual return option for FY 2019-2020 has not been enabled on the GSTN portal Therefore they were already not required to file the annual return
- v. That all the documents as per CGST Act and Rules were uploaded on the GSTN portal while making the application. The adjudicating authority failed to look at the same and issued SCN unnecessarily ;
- vi. That they had mentioned in their covering letter of their refund application that the tax was wrongly paid under IGST head instead of SGST. The tax was paid again correctly and all the challans were uploaded with their application ;
- vii. That as per Rule 90 (1) of CGST Rules, 2017 the proper office shall issue the order within sixty days from the date of receipt of application ie 16-10-2020 ;
- viii. That they had received order on dated 23-11-2020 which is more than a month later and hence as per Section 56 they are liable for interest @ 6% from the date of filing.
- ix. Relying to Hon'ble High Court's judgment in the case of M/s.Willowood Chemicals P.ltd Vs UOI and M/s.Saraf Natural Stone Vs UOI the appellant contended that they should be granted refund with interest.

4. Personal hearing was held on dated 24-11-2021. Shri Rohan Shah, Authorized Representative appeared on behalf of the appellant on virtual mode. He stated that he has nothing more to add to their written submission till date.



5. I have carefully gone through the facts of the case, grounds of appeal and documents available on record. I find that the refund claim was rejected due to time bound matter and non submission of reply to SCN under which the appellant was asked to furnish annual returns, reasons for excess payment of tax and copy of challans. The appellant, interalia contended that in terms of Notification No.47/2019 dated 9-10-2019 they were not required to file annual returns ; that they had mentioned the reasons for excess payment of tax and also submitted copy of challans along with refund application.

6. I find that refund claim pertain to the month March 2019 and the application for refund claim was filed on 19-8-2020 for refund of excess payment of tax. As per Section 54 of CGST Act, 2017, application for refund is to be filed within two years from the relevant date and relevant date in the subject case is to be reckoned from the date of payment of tax which in the case falls in the month of April 2021. Therefore, claim filed on 19-8-2020 is within the time limit prescribed under Section 54 of CGST Act, 2017.

7. Regarding requirement for filing of annual return, I have examined the Notification No.47/2019-CT dated 9-10-2019 and find that as per said Notification the registered persons whose aggregate turnover in a financial year does not exceed two crore rupees and who have not furnished the annual return under sub-section (1) of section 44 of the said Act read with sub-rule (1) of rule 80 of the Central Goods and Services Tax Rules, 2017 before the due date, as the class of registered persons who shall, in respect of financial years 2017-18 and 2018-19, follow the special procedure such that the said persons shall have the option to furnish the annual return under sub-section (1) of section 44 of the said Act read with sub-rule (1) of rule 80 of the said rules. I notice that even though the appellant contended that they were not required to file annual return in terms of above Notification, they had not brought on record as to whether they fall under the category of registered persons covered under the said Notification. During appeal proceedings the appellant vide their letter dated 18-12-2021 intimated that they had filed GSTR 9 for the FY 2018-2019 and also submitted copy of the same as per which they had filed GSTR9 return for the FY 2018-2019 on dated 12-9-2020. On further verification in GST portal I find that the appellant has filed Annual Return in GSTR 9 for the year 2018-2019 on dated 12-9-2020 ie even before the issue of impugned order. I further notice that the adjudicating authority vide letter File No.V/Div/GST Refund/Misc/2021-2022 dated 16-12-2021 informed that the annual return was called for reconciliation purpose so that the tax liability and payment of tax can be verified. Since, the appellant has already filed the returns, the adjudicating authority should have examined the return in GST portal rather than asking the appellant to submit the same. Therefore query raised in this regard is totally unwarranted and without verifying the facts and hence I do find any rationale or justification in rejecting refund on this ground.

8. With regard to non mention of reasons for excess payment of tax and non submission of copy of challans, the appellant contended that they had mentioned the reasons and submitted copy of challans at the time of filing of refund application. I have verified copy of letter dated 8-8-2020 under which the refund application was submitted and find that they had clearly mentioned that they had made wrong payment of IGST instead of SGST in the month of March 2019 and also submitted copy of challans. However, for confirmation of the same a report was called for from the adjudicating authority.

authority and vide letter File No.V/Div/GST Refund/Misc/2021-2022 dated 16-12-2021 the adjudicating authority informed that the appellant has stated that on payment of tax they have made wrong payment of tax under IGST column instead of SGST and they have made tax payment in the correct column and have submitted the copy of challans. Thus, I find that the above ground raised in the SCN is also without verifying the facts and without application of mind. Therefore, the above query raised in SCN is also totally unwarranted and hence I do find any rationale or justification in rejecting refund on this ground.

9.. I further find that in addition to above compliance the appellant has also claimed interest on refund amount. I find that as per Section 56 of CGST Act, 2017, it was provided that "If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of an application under the said sub-section till the date of refund of such tax." In the subject case no order was passed yet ordering refund of tax necessitating payment of interest, which is to be dealt by the appropriate authority passing order sanctioning refund. Further non grant of interest is also not a part of Order appealed against in this appeal. Therefore, at this stage of proceedings I do not intend to make any further discussion on this ground.

10. In view of above facts and discussions, I find that except on above flimsy and unnecessary grounds no other reason or ground having bearing on admissibility of refund was raised in the SCN. Thus, the adjudicating authority has rejected the refund entirely on needless and unjustifiable grounds and hence I firmly hold that the impugned order deserves to be set aside. Accordingly, I allow the appeal filed by the appellant and set aside the impugned order passed by the adjudicating authority.

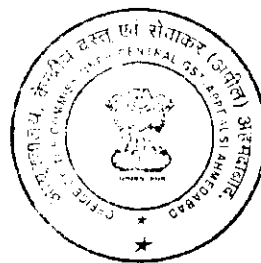
11. अपीलकर्ता द्वारा दर्ज की गई अपील को निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed off in above terms.

Date :
Attested

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

To,
Shri Umesh Balkrishna Lavsi
of M/s. Lavsi Cable Industries,
L 21, GIDC Estate,


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

