



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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टेलीफैक्स 07926305136



DIN- 20220864SW000000C729

रजिस्टर्ड डाक ए.डी. द्वारा

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फाइल संख्या : File No : GAPPL/ADC/GSTP/1509/2022 -APPEAL

13119-22

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-101/2022-23**

दिनांक Date : **30-08-2022** जारी करने की तारीख Date of Issue : **30-08-2022**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

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Arising out of Order-in-Original No. **ZO2405210196640 DT. 14.05.2021**

issued by Deputy Commissioner, Division-VI, Vastrapur, Ahmedabad South

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

**M/s. Tulsidas Khimji Pvt. Ltd. OPP Sanyas Ashram, 313-314,**

**Dev Nandan Mega Mall, Near M J Library, Ashram Road, Ahmedabad-380009**

(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. Tulsidas Khimji Private Ltd 313-314, Opp Sanyas Ashram, Near MJ Library, Ashram Road, Ahmedabad 380 009 (hereinafter referred to as the appellant) has filed the present appeal online on dated 26-3-2022 against Order No. ZO2405210196640 dated 14-5-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, Division VI (Vastrapur), Ahmedabad South. (hereinafter referred to as the adjudicating authority)

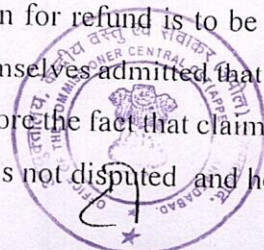
2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAACT4123G1ZT has filed refund claim on dated 30-3-2021 for refund of Rs.17,022/- on supplies made to SEZ with payment of tax for the period 2018-2019. The adjudicating authority vide impugned order held that refund is inadmissible due to delay in refund application and that the claim is time barred in view of Section 54 (1) of CGST Act, 2017.

3. Being aggrieved the appellant filed the present appeal on the following grounds:  
They had relied on suo motu writ petition for extension of limitation by Hon'ble Supreme Court due to the onset of Covid pandemic. The time limit to file the refund application will be two years from the date of receipt of payment in convertible foreign currency and the refund application should have been filed as per the said date however the same could not be filed due to the reason that Government has ordered nationwide lockdown due to covid 19 pandemic. The appellant also relied upon dated 23-3-2020, Order dated 27-4-2021 and Order dated 23-9-2021 passed by Hon'ble Supreme Court ordering extension of period of limitation. They also requested to set aside the impugned order and allow this appeal with consequential relief to them.

4. Personal hearing was held on dated 22-8-2022. Shri Ashish Singh, authorized representative appeared on behalf of the appellant on virtual mode. He stated that they have nothing more to add to their written submission till date.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on records.. At the outset, I find that the impugned order was communicated to the appellant on dated 14-5-2021 and present appeal was filed online on dated 26-3-2022 (physical copy on 30-3-2022) ie after a period of ten months from the date of communication of order. Hence the present appeal was filed beyond the time limit prescribed under Section 107 of the Act. However as per Hon'ble Supreme Court's Order dated 10-1-2022 in suo motu writ petition (C ) NO.3 of 2020 in MA No.665/2021, excluding the period from 15-3-2020 till 28-2-2022 in computing time limitation and providing 90 days extension from 1-3-2022 in filing appeals, I hold that the present appeal is not hit by time limitation factor.

6. In this case refund claim was filed on dated 30-3-2021 for refund of tax paid on suppliers made to SEZ for the period 2018-2019. As per 54 (1) OF CGST Act, 2017, application for refund is to be filed within 2 years from the relevant date. In the grounds of appeal the appellant themselves admitted that they could not file the refund application within two years from relevant date. Therefore the fact that claim was filed beyond the time limit prescribed under Section 54 (1) of CGST Act, 2017 is not disputed and hence





I do not find any infirmity in the impugned order passed by the adjudicating authority rejecting refund claim on time limitation ground. However, the appellant filed the present appeal to set aside the impugned order relying upon various Orders passed by Hon'ble Supreme Court in suo motu writ petition providing extension of period limitation. I find that due to COVID outbreak in the Country, Hon'ble Supreme Court in suo motu Misc. Application No.665/2021 in SMW ( C ) No.3/2020 time and again has passed various Orders excluding the period from 15-3-2020 till 28-2-2022 for computing time limitation and providing 90 days extension of time with effect from 1-3-2022 for filing any suit, appeal, application or any proceedings. In this regard CBIC has also issued Notification No.13/2022-CT dated 5-7-2022 wherein it was notified as under:

*In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021, the Government, on the recommendations of the Council, hereby,-*

*iii) excludes the period from the 1<sup>st</sup> day of March 2020 to the 28<sup>th</sup> day of February 2022 for computing the period of limitation for filing of refund application under Section 54 or Section 55 of the said Act.*

*2. This notification shall be deemed to have come into force with effect from the 1<sup>st</sup> day of March 2020.*

6. In view of above Notification, I find that the claim filed by the appellant on 30-3-2021 for the claim period 2018-2019 is not hit by time limitation prescribed under Section 54 (1) of CGST Act, 2017. Therefore, I hold that the impugned order passed by the adjudicating authority rejecting refund on time limitation ground does not sustain and deserve to be set aside. Since the claim was rejected on time limitation ground the admissibility of refund on merit is not examined in this proceeding. Therefore, I order that any claim of refund filed in consequent to this Order may be dealt with by the appropriate authority in terms of Section 54 of CGST Act, 2017 read with Rules framed thereunder. Accordingly, I set aside the impugned order and allow the appeal filed by the appeal.

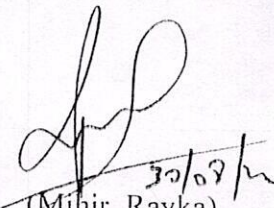
अपील कर्थाद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Date :

Attested

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

  
(Mihir Rayka)  
Additional Commissioner (Appeals)





By RPAD,

To,

M/s. Tulsidas Khimji Pvt. Ltd.  
OPP Sanyas Ashram, 313-314,  
Dev Nandan Mega Mall,  
Near M J Library, Ashram Road,  
Ahmedabad-380009

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) The Asst./Deputy Commissioner, CGST, Division-VI, Ahmedabad South
- ✓ 6) Guard File
- 7) PA file

