



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



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क फाइल संख्या : File No : GAPPL/ADC/GSTP/229/2022 & GAPPL/ADC/GSTP/230/2022 -APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-104/2022-23**  
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)

ग Arising out of Order-in-Original No. **ZZ2410210198367 DT. 14.10.2021 & ZV241021071723 DT. 13.10.2021** issued by Assistant Commissioner, Division VIII, Ahmedabad South

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

**The Assistant Commissioner, CGST, Division VIII, 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> .

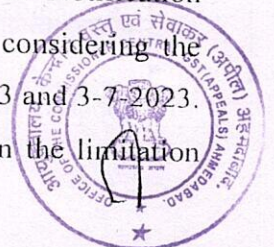


## ORDER IN APPEAL

The Assistant Commissioner, CGST, Division VIII, Ahmedabad South (hereinafter referred to as the appellant) has filed two appeals offline in terms of Advisory NO.9/2020 dated 24-9-2020 issued by the Additional Director General (Systems), Bangalore on dated 28-3-2022 against Order No.ZZ2410210198367 dated 14-10-2021 and ZV2410210171723 dated 13-10-2021 (hereinafter referred to as the impugned orders) passed by the Assistant Commissioner, CGST, Division VIII, Ahmedabad South (hereinafter referred to as the adjudicating authority) sanctioning refund of Rs.19378/- and Rs.58662/- to M/s.Seashore Tech, 512/A, 5<sup>th</sup> Floor, Times Square Arcade, Thaltej-Shilaj Road, Ahmedabad 380059 (hereinafter referred to as the respondent).

2. Briefly stated the fact of the case is that the respondent registered under GSTIN 24ADAFS3267N1ZS has filed refund claim for Rs.19378/- and Rs.58662/- for refund of ITC accumulated due to export of service without payment of tax vide ARN 240921111931J dated 29-9-2021 for the period July 2019 to September 2019 and vide ARN AA240921107988W dated 28-9-2021 for the period April 2019 to June 2019 respectively. After verification, the adjudicating authority vide impugned orders sanctioned refund to the respondent. During review of the refund claim it was observed that the claim filed on dated 29-9-2021 and 28-9-2021 was filed beyond time limit stipulated under Section 54 (1) of CGST Act, 2017. The respondent has raised invoices for export of services and payment of services was received after raising of invoices. Thus, relevant date in the above claims comes to 6-9-2019 in respect of claim for the period July 2019 to September 2019 and 4-7-2019 in respect of claim for the period April 2019 to June 2019 which is the last date of receipt of payment in foreign exchange and refund should have been filed by 3-7-2021 and 5-9-2021 respectively ie within two years from the relevant date. Therefore, the adjudicating authority failed to consider the limitation aspect and erroneously sanctioned the claim which was time barred. Hence impugned orders are required to be set aside and refund sanctioned erroneously to the respondent is required to be recovered along with interest. In view of above the appellant prayed to set aside the impugned orders and to pass Order directing the original authority to demand and recover the amount erroneously refunded with interest and to pass any other Orders as deem fit in the interest of justice.

3. Personal hearing was held on dated 24-8-2022. No one appeared on behalf of the appellant. Shri Avinash Talreja, authorised representative appeared on behalf of the respondent on virtual mode. They have been given five working days to file their reply. Accordingly, the appellant vide letter dated 24-8-022 filed submission in respect of both the appeals, wherein they interalia contended that as per Section 54 (1) and Explanation 2 (c) to Section 54, refund application for tax paid may be made by the registered person beyond the expiry of two years from the relevant date which in their case is 6-9-2019 and 4-7-2019. As per Para 1 (iii) of Notification NO.13/2022CT dated 5-7-2022 which is applicable with effect from 1-3-2020 considering the exclusion period from 1-3-2020 to 28-2-2022 the two year period end on 5-9-2023 and 3-7-2023. They had filed refund application on 29-9-2021 and 28-9-2021 which is within the limitation



period of 2 years from relevant date. Therefore refund application filed and refund sanctioned are within the limitation period and not erroneous in the eyes of Law.

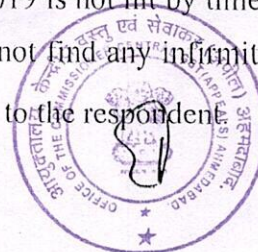
4. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. In this case refund claim was filed for refund of ITC on export of services without payment of tax, on dated 29-9-2021 for the claim period July 2019 to September 2019 and on dated 28-9-2021 for the claim period April 2019 to June 2019, which was sanctioned by the adjudicating authority. The present appeals were filed to set aside the order passed by the adjudicating authority sanctioning refund to the respondent and to pass order for recovery of refund with interest on the ground that the claims were time barred under Section 54 (1) of CGST Act, 2017 and hence the adjudicating authority has erroneously sanctioned refund to the respondent. As per Section 54 (1) the due date for filing refund claim is two years from relevant date and as per Explanation 2( C ) of Section 54 the relevant date is date of receipt of payment in foreign exchange. Accordingly, in the subject appeals taking into account the date of receipt of payment in foreign exchange which is on 6-9-2019 and 4-7-2019, it was alleged that due date for filing of claim falls on or before 5-9-2019 and 3-7-2019 and hence the claims filed on 29-9-2021 and 28-9-2021 were filed beyond time limit prescribed under Section 54 (1) of CGST Act, 2017. The above fact and ground is also not disputed by the respondent in their submissions. However, I refer to 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.*

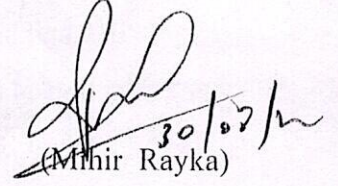
6. As per above Notification the period from 1-3-2020 to 28-2-2022 are excluded for computing the period of limitation for filing refund claims under Section 54 (1) of CGST Act, 2017. Accordingly, I find that the claim filed by the appellant on 29-9-2021 and 28-9-2021 for the claim period July 2019 to September 2019 and April 2019 to June 2019 is not hit by time limitation prescribed under Section 54 (1) of CGST Act, 2017. Therefore, I do not find any infirmity in the impugned orders passed by the adjudicating authority sanctioning refund to the respondent.



7. In view of above, I hold that the present appeals filed by the appellant no longer sustain and succeed on merit and legality so as to set aside the impugned orders and to order recovery of refund sanctioned to the respondent. Accordingly, I upheld the impugned orders and reject the appeals filed by the appellant.

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

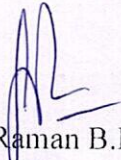
8. The appeals filed by the appellant stands disposed of in above terms.

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested

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

To,

The Assistant Commissioner,  
CGST,  
Division VIII  
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) M/s.Seashore Tech, 512/A, 5<sup>th</sup> Floor, Times Square Arcade, Thaltej-Shilaj Road, Ahmedabad 380059
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

