



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- 20220964SW0000333603

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/113/2022 -APPEAL / 3200 - 3205

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC- 112/2022-23**

दिनांक Date : **08-09-2022** जारी करने की तारीख Date of Issue : **12-09-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZN2403210021804** dated **01.03.2021** issued by Assistant Commissioner, Division-I, Ahmedabad South

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

**M/s. Mash Energy India Pvt Limited, Plot No.47,
Gopal Charan Ind. Estate, Bakrol, Ahmedabad, Gujarat-382433**

(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 .



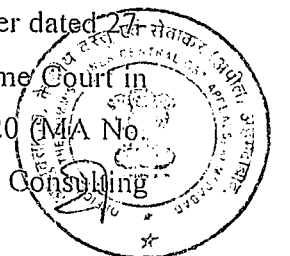
ORDER IN APPEAL

M/s.MASH Energy India Private Limited, Plot No.47, Gopal Charan Ind. Estate, Bakrol, Ahmedabad 382 433 (hereinafter referred to as the appellant) has filed the present appeal on dated 27-12-2021 against Order No.ZN2403210021804 dated 1-3-2021 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, CGST, Division I (Rakhial), Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAMCM1278R1ZR has filed refund claim for Rs.16,14,483/- for refund of ITC accumulated on account of export of goods without payment of tax under Section 54 (3) of CGST Act, 2017 for the period 2018-2019. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant due to delay in refund application and also due to non compliance to show cause notice and non appearance for personal hearing.

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

The adjudicating authority has erred in rejecting the refund application mechanically without appreciating the judicial precedent that a substantial benefit available to an assessee under Law shall not be denied due to any procedural lapses. They had made export of goods during the FY 2018-2019 on 26th October 2018 and hence due date for filing refund application was 25th October 2020. However, the refund application was filed on dated 3-2-2021. However, in view of Order passed by Hon'ble Supreme Court the period from 15th March 2020 to 14th March 2021 is excluded from calculating the period of limitation, and hence refund application filed by them is within time limit. Filing of refund application is merely a procedural requirement. The primary required is to satisfy the conditions of Section 16 of IGST Act, 2017 being zero rated supply and fulfilling the conditions stipulated in the letter of undertaking. They fulfilled all the necessary conditions and hence substantial legal required for claiming refund is already fulfilled by them. However, the refund application was filed beyond due date which at the most shall be treated as procedural lapse, which is due to nation wise lockdown due to Covid 19 and which was beyond their control. Further, rejection of ITC refund to an 100% exporter shall render the entire business unviable for them since the entire ITC shall form part of the Cost of goods sold. Therefore rejecting the refund for mere technical and procedural lapses shall be unfair to them and bad in Law. The appellant also relied upon the decision of Hon'ble Supreme Court in the case of M/s.Manglore Chemicals and Fertilizers Ltd Vs Deputy Commissioner of Commercial Taxes and Ors. In view of above submissions, the appellant requested to quash and set aside the impugned order and allow refund. Personal hearing was held on dated 25-8-2022. Shri Tejas Dhamal, authorized representative appeared on behalf of the appellant on virtual mode. They have been given five working days to submit additional information as per their request. Accordingly the appellant vide letter dated 27-8-2022, filed additional submission wherein the appellant referring to Hon'ble Supreme Court in cognizance for extension of limitation in suo motu writ petition (Civil) NO. 3 of 2020 (MIA No. 665/2021) ; decision of Bombay High Court in the case of M/s.Saiher Supply Chain Consulting



Pvt.Ltd in Writ Petition (L) no.1275/2021 dated 12-1-2022 ; decision of Madras High Court in the case of M/s.GNC Infra LLP Vs Assistant Commissioner in WP NO.18165 and 18168 of 2021 and Notification NO.13/2022-CT dated 5-7-2022 contended that application for refund made on 3-2-2021 for export made on 26th October 2018 is well within the extended time limit and hence requested to restore their application and quash the impugned order.

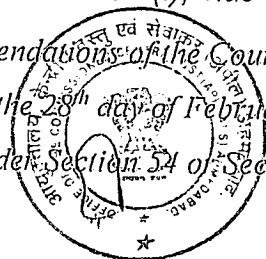
4. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. At the outset, I find that the impugned order was communicated to the appellant on dated 1-3-2021 and present appeal was filed on dated 27-12-2021 ie after a period of nine months from the date of communication of order hence the 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.

5. In this case refund claim was filed on 3-2-2021 for refund of ITC on export of services without payment of tax made in the month of October 2018 was rejected due to time limitation in filing refund application and non compliance to show cause notice. I find that appellant's submissions in appeal is silent with regard to filing of compliance to show cause notice. However, I find from GST portal that the appellant has not filed any reply to show cause notice issued to them. Regarding time limitation reason, in the ground of appeal the appellant themselves admitted that the claim was filed beyond time limit stipulated under Section 54 (1) of CGST Act, 2017. However, the present appeal was filed on the grounds that the delay in filing of refund application is only a procedural lapse as they had fulfilled all other conditions for export and claim for refund and also relying upon Orders passed by Hon'ble Supreme Court providing exclusion of period from 15-3-2020 to 2-10-2021 in computing time limitation and also referring to Notification NO.13/2022-CT dated 5-7-2022.

6. In this regard, 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 1st day of March 2020 to the 28th day of February 2022 for computing the period of limitation for filing of refund application under Section 54 of Section 55 of the said Act.



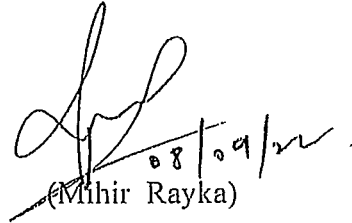
2. This notification shall be deemed to have come into force with effect from the 1st day of March 2020.

7. 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 3-2-2021 for the claim period October 2018 is not hit by time limitation prescribed under Section 54 (1) of CGST Act, 2017.

8. In view of above, I hold that the impugned order passed by the adjudicating authority rejecting refund on time limitation reason does not sustain and hence 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 and after observing principles of natural justice. 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 |

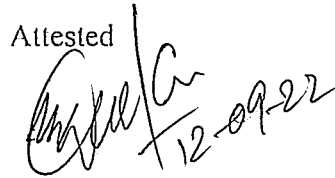
9. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


12-09-22

(Sd/-) P. J. Jadhav

Superintendent
Central Tax (Appeals),
Ahmedabad
By RPAD

To,

M/s.MASH Energy India Private Limited,
Plot No.47, Gopal Charan Ind. Estate,
Bakrol, Ahmedabad 382 433

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 Assistant Commissioner, CGST, Division I (rAKHIAL) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- ✓ 6) Guard File
- 7) PA file

