



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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DIN- 20220964SW000000CFCO

रजिस्टर्ड डाक ए.डी. द्वारा

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क फाइल संख्या : File No : GAPPL/ADC/GSTP/110/2022 -APPEAL & GAPPL/ADC/GSTP/111/2022 - APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-115/2022-23**
दिनांक Date : **08-09-2022** जारी करने की तारीख Date of Issue : **12-09-2022**

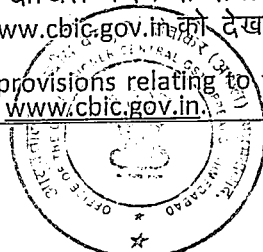
श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZW2406210142163** dated **12.06.2021** & **ZW2406210142096** dated **12.06.2021** issued by Deputy Commissioner, CGST, Division VIII, Vejalpur, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Cambro Nilkamal Private Limited , Godown No. 2, Durvey No. 271, K V Godowns, Sanathal Cross Road, Sarkhej, Ahmedabad,Gujarat-382210

(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 .

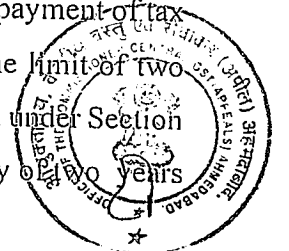


ORDER IN APPEAL

M/s.Cambro Nilkamal Private Limited, Godown NO.2, Survey No.271, KV Godowns, Sanathal Cross Road, Sarkhej, Ahmedabad 382 210 (hereinafter referred to as the appellant) has filed two appeals on dated 2-12-2021 against Order No.ZW2406210142163 dated 12-6-2021 and Order No.ZW2406210142096 dated 12-6-2021 (hereinafter referred to as the impugned orders) passed by the Deputy Commissioner, CGST, Division VIII, Vejalpur, Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAECC2392J1ZO has filed refund claim for Rs.5,24,892/- and for Rs.1,63,495/- for refund of excess payment of tax for the month of October 2018 and September 2018 respectively. The appellant was issued show cause notice reference NO.ZW2405210249740 dated 17-5-2021 and No.ZT2405210249651 dated 17-5-2021 for rejection of refund on the ground of delay in filing refund application. The adjudicating authority vide impugned orders held that refund is inadmissible to the appellant due to delay in filing refund application.

3. Being aggrieved the appellant filed the present appeal on the following grounds:
The impugned order passed by the adjudicating authority is against Law, equity and natural justice and thus arbitrary, void, bad and illegal on the ground that in time of Covid 19 pandemic, the proper officer has rejected the refund application only on the ground of delay without even mentioning period (how many days) of delay. In two transactions of supply of goods made in October 2018 and September 2018 due to inadvertent error while filing GSTR1 the appellant disclosed these transaction and discharges IGST on them instead of CGST and SGST which came to their notice while filing GSTR9 annual return. Though they paid IGST in GSTR3B returns the payment of SGST and CGST was short by Rs.5,24,892/- and Rs.1,63,495/- and payment of IGST was excess by Rs.5,24,892/-and Rs.1,63,495/-. Therefore, they are entitled for refund under Section 77 of CGST Act, 2017 and Section 19 of IGST Act, 2017 as per which there is no provision for any time limit for refund of the amount paid under wrong head. Further there is difference in provision of refund under Section 54 and 55 of Chapter XI and Section 77 which is under Chapter XV of the CGST Act, 2017. Under Section 54 and 55 there is provision of time limit of two years for filing refund application whereas under Section 77 and Section 19 of IGST Act, duty is casted on authority to refund such amount. The proper officer has erred in interpreting that the time limit specified under Section 54 will be applicable for the refund under Section 77 of the Act. They first paid IGST with return for the period September 2018 and paid CGST and SGST on dated 26-12-2020 and thus became entitled to claim refund of IGST earlier paid by them on the same transaction. Thereafter within a period of five months from the date of payment of CGST and SGST, on 3-5-2021 the appellant filed application for refund of IGST earlier paid by them on same transaction. It is clear that they had claimed refund only when they paid CGST and SGST and hence relevant date is date of payment of tax under correct head and not the date of payment of tax under wrong head. Therefore application filed on 3-5-2021 is well within the time limit of two years from relevant date of 16-12-2020. As per Rule 89 (1A) of CGST Rules, refund under Section 77 of the CGST Act and Section 19 of IGST Act, 2017 can be claimed before expiry of two years.

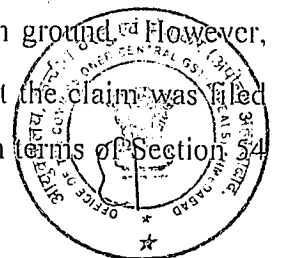


from the date of payment of tax under correct head. In view of above the proper officer erred in considering the date of payment of tax under wrong head as relevant date and hence impugned order is liable to quashed and set aside. Further in view of Hon'ble Supreme Court's order dated 23-9-2021 the refund application filed on 3-5-2021 is within the time limit prescribed under Section 54 (1) as extended by Hon'ble Supreme Court. The appellant also relied upon decision of Hon'ble High Court in the case of Saji Vs Commissioner of State GST (2018 VIL 508 – Ker) and in the case of Shree Nanak Ferro Alloys (2020 VIL 30 JKR and contended that on the above facts and judgements the impugned order is liable to be quashed and set aside. The impugned order passed by the adjudicating authority is a non speaking order ; that there is no mention of any section of GST Act which provides for time limit in filing refund application and how it is applicable in their case and without mentioned that on which date time limit completed and how many days delay was there in filing refund application. The non speaking Order is passed in violation of principles of natural justice. That the present appeal was filed within time limit in view of Order 23-9-2021 of Hon'ble Supreme Court. In view of above submissions the appellant requested to quash and set aside the impugned order and allow the refund application.

4. The appellant made additional submission vide letter dated 24-8-2022 wherein they reiterated submission made in ground of appeal and further contended that as per sub section 14 (2) (h) of Section 54 of CGST Act, 2017 the relevant date in their case should be treated as to be 26-12-2020 the date on which tax viz CGST and SGST was paid under correct head and thereby application for refund made on 3-5-2021 is well within the prescribed time limit of two years. This fact is also supported by amendment/insertion of sub rule (ii) of Rule 89 of CGST Rules, 2017 which provides for making application of refund within two years from the date of payment of tax under correct head. They also referred to Notification NO.13/2022-CT dated 5-7-2022 providing exclusion of period from 1-3-2020 to 24-2-2022 for computation of limitation for filing refund application under Section 54 or Section 55 of GST Act, 2017.

5. Personal hearing was held on dated 25-8-2022. Shri R.G.Makawana, authorized representative appeared on behalf of the appellant on virtual mode. He stated that they have nothing more to add to their written submission and have asked to consider their earlier submission, including dated 24-8-2022.

6. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. I find that in these appeals the refund claim filed on dated 3-5-2021 for excess payment of tax for the month of October 2018 and September 2018 was rejected due to delay in filing of refund application. under Section 54 (1) of CGST Act, 2017. As per Section 54 (1) the due date for filing refund claim is two years from relevant date and as per Explanation 2 (h) of Section 54 the relevant date is date of payment of tax. In the impugned order neither the relevant date nor the due date was mentioned for rejecting the claim on time limitation ground. However, considering the claim period and date of filing of refund application, I find that the claim was filed beyond two years from the relevant date and hence the claim was time barred in terms of Section 54



(1) of CGST Act, 2017. 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 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 or 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.

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 3-5-2021 for the claim period October 2018 and September 2018 is not hit by time limitation prescribed under Section 54 (1) of CGST Act, 2017. I further find that in terms of sub rule 1A of Rule 89 of CGST Rules, 2017 read with CBIC Circular No. Circular No. 162/18/2021-GST dated 25-9-2021 also the claims filed on 3-5-2021 is well within the time limit prescribed for claiming refund.

7. In view of above, I hold that the impugned orders passed by the adjudicating authority rejecting refund on time limitation reason does not sustain on merit and legality 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 orders and allow the appeals filed by the appeal.

अपील कर्षाद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है |

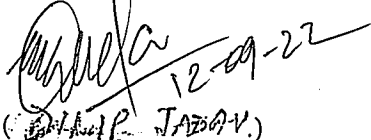
8. The appeals filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

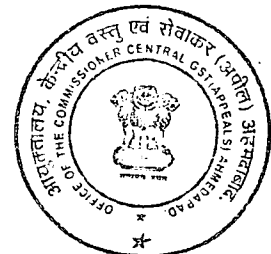
Additional Commissioner (Appeals)

Date :

Attested


12-09-22

(~~DAIRY~~ JADAV.)
Superintendent
Central Tax (Appeals),
Ahmedabad
By RPAD



By RPAD,

To,

Cambro Nilkamal Private Limited
Godown No. 2, Durvey No. 271,
K V Godowns, Sanathal Cross Road, Sarkhej,
Ahmedabad, Gujarat-382210

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-VIII, Ahmedabad South
- 6) Guard File
- 7) PA file

Pass
[Signature]
20/9/22



