



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- 20221164SW0000914223

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/982 & 983/2022 -APPEAL /SH-78

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-169 to 170/2022-23**  
दिनांक Date : **30-11-2022** जारी करने की तारीख Date of Issue : **30-11-2022**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZT2401220154369 DT. 18.01.2022 & ZW2401220155614 DT. 18.01.2022** issued by Assistant Commissioner, CGST & CX, Division-VI, Ahmedabad South

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

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

**Dev Nandan Mega Mall, Near M J Library, Ashram Road, Ahmedabad-382009**

(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 <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****Brief Facts of the Case :**

**M/s. Tulsidas Khimji Pvt. Ltd.**, 313-314, Opp. Sanyas Ashram, Dev Nandan Mega Mall, Near M J Library, Ashram Road, Ahmedabad – 382 009 (hereinafter referred as '*Appellant*') has filed the following appeals against the Refund Sanction/Rejection orders in the form RFD-06 (hereinafter referred as '*impugned orders*') passed by the Assistant Commissioner, CGST, Division – VI Vastrapur, Ahmedabad South (hereinafter referred as '*adjudicating authority*').

Appeal Nos.	RFD-06 Order Nos.	Amount of Refund Rejected	Refund Claim period
GAPPL/ADC/GSTP/983/2022 Dated 05.04.2022	ZT2401220154369 Dated 18.01.2022	Rs.7,23,929/-	April'18 to March'19
GAPPL/ADC/GSTP/982/2022 Dated 05.04.2022	ZW2401220155614 Dated 18.01.2022	Rs.1,73,649/-	April'19 to March'20

**2(i).** Briefly stated the facts of the case is that the '*Appellant*' is holding GST Registration - GSTIN No.24AAACT4123G1ZT has filed the present appeals. The '*Appellant*' had filed following refund applications on account of "*Export of Services with payment of tax*".

Refund ARN / Date of Refund Application	Period of Refund Claim	Amount of Refund Claim (IGST)
AA241121033419P / Dated 16.11.2021	April'18 to March'19	Rs.7,23,929/-
AA241121037613T / Dated 17.11.2021	April'19 to March'20	Rs.4,38,801/-

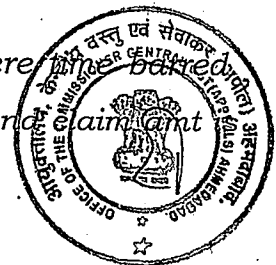
In response to aforesaid refund claims separate Show Cause Notices dated 07.01.2022 were issued to the '*Appellant*'. It was proposed that refund applications are liable to be rejected for the reasons "*Delay in Refund Application*". Further, in the SCNs following Remark was also mentioned :

In response to Refund claim pertains to Period 2018-19 :

"As per Section 54(1) of the CGST Act, 2017 refund claim is time barred and is liable for complete rejection"

In response to Refund claim pertains to Period 2019-20 :

"As per Section 54 (1) of the CGST Act, 2017 some FIRC were time barred. Amount of Rs.3,24,153/- is liable for rejection and eligible refund claim amt Rs.1,14,648/-"



With reference to above SCNs the appellant had filed reply under Form-GST-RFD-09 dated 14.01.2022 with supporting documents as Bill Register and Case Reference.

Thereafter, the *adjudicating authority* has rejected the entire refund claim of Rs.7,23,929/- pertains to period April'18 to March'19 and rejected partial amount of refund claim of Rs.1,73,649/- pertains to period April'19 to March'20 considering as Time Barred vide *impugned orders*.

**2(ii).** Being aggrieved with the *impugned orders* the *appellant* has filed the present appeals on 05.04.2022 wherein stated that –

- They have filed refund application under Section 54 of the CGST Act, 2017 on 16.11.2021 & 17.11.2021 for the period 2018-19 & 2019-20 respectively, for Refund of Export of Services with payment of Integrated Tax.

- They have filed detailed reply to SCNs to substantiate that the refund applications has been filed in time.

- As per Section 54(1) of the CGST Act, 2017 in light of Hon'ble Supreme Court's Order in connection with Covid-19 Pandemic the refund claims are filed within time limit as per extension of time limitation granted by the Hon'ble Supreme Court.

In view of above, the appellant has prayed to set aside the impugned orders dated 18.01.2022 and allow the appeals in full with consequential relief or pass such order or orders as may be deemed fit and proper in the facts and circumstances of the case.

**3.** Personal Hearing in the matter was through virtual mode held on 06.10.2022 wherein Mr. Ashish Singh appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has reiterated the submissions made till date and stated that they have nothing more to add to their written submissions till date.

### **Discussion and Findings :**

**4(i).** I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. I find that the 'Appellant' had preferred the refund applications on account of "Export of Services with payment of tax" for the period from April'18 to March'19 on 16.11.2021 and for April'19 to March'20 on 17.11.2021 for the amount of Rs.7,23,929/- and Rs.4,38,801/- respectively. In response to said refund applications show



Cause Notices were also issued to them proposing rejection of refund claim. Further, I find that the appellant had filed replies to said SCNs under Form RFD-09 dated 14.01.22. However, I find that the adjudicating authority vide impugned orders has rejected the refund claim of Rs.7,23,929/- and Rs.1,73,649/- considering it as time barred in terms of Section 54(1) of the CGST Act, 2017.

Since, the refund claims are rejected on time limitation ground the relevant provisions are reproduced as under :

**\*Section 54. Refund of tax.- \*\***

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

**Provided** that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in <sup>1</sup>[such form and] manner as may be prescribed.

**Explanation.-** For the purposes of this section,-

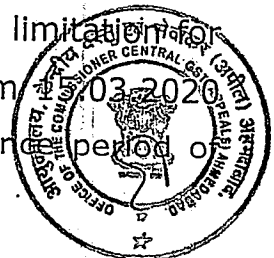
(2) "relevant date" means-

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of-

(i) receipt of payment in convertible foreign exchange <sup>6</sup>[or in Indian rupees wherever permitted by the Reserve Bank of India] , where the supply of services had been completed prior to the receipt of such payment; or  
(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

**4(ii).** I find that in this case refund claim was rejected solely on time limitation ground. From the facts of the case I find that the refund claim for the period April'18 to March'19 and for April'19 to March'20 was filed on 16.11.21 and 17.11.2021 respectively. I find that refund claim pertains to period April'18 to March'19 is filed beyond two years from the relevant date prescribed under explanation (2) to Section 54 of the CGST Act, 2017. Further, as regards to refund pertains to period from April'19 to March'20 I find that refund application for certain period is filed beyond two years from the relevant date prescribed under explanation (2) to Section 54 of the CGST Act, 2017.

**4(iii).** In the above context, I find that the Hon'ble Supreme Court in Misc. Application No. 665/2021 in SMW(C) No. 3/2020 vide Order dated 23.09.2021 ordered that for computing the period of limitation for any suit, appeal, application or proceedings the period from 03.10.2020 till 02.10.2021 shall stand excluded and consequently balance period of



limitation remaining as on 15.03.2020 if any, shall become available with effect from 03.10.2021 and that in cases where the limitation would have expired during period from 15.03.2020 till 02.10.2021 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. Subsequently, Hon'ble Supreme Court vide order dated 10.01.2022 ordered that in continuation of order dated 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

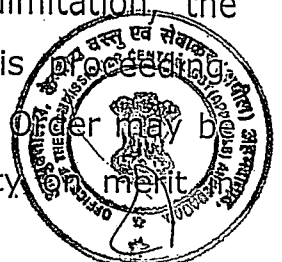
Further, I find that on the subject matter Notification No. 13/2022-Central Tax dated 05.07.2022 has also been issued by the CBIC. The relevant para is reproduced as under :

*(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 computation of period of limitation for filing 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.*

**4(iv).** In view of foregoing facts, I find that in respect of refund claims for which due date for filing refund claim falls during period from 01.03.2020 to 28.02.2022, two years time limit under Section 54 of the CGST Act, 2017 is to be reckoned, excluding the said period. In the subject case, the claims were filed for the period April'18 to March'20, considering the due date prescribed under Section 54 the claim period for which the due date falls during 01.03.2020 to 28.02.2022 is not hit by time limitation under Section 54 of the CGST Act, 2017.

**4(v).** I find that in the present matter the claims were filed for the period April'18 to March'20 on 16 & 17.11.2021, accordingly, following the order of Hon'ble Supreme Court in MA 665/2021 in SMW(C) No. 3/2020 as well as in the light of Notification No. 13/2022-Central Tax dated 05.07.2022, I hold that the rejection of refund claim of on the ground of time limitation is not legal and proper. Hence, the appeal filed by the appellant succeeds on time limitation ground. Needless to say, since the claim was rejected on the ground of time limitation, the admissibility of refund on merit is not examined in this order. Therefore, any claim of refund filed in consequence to this order may be examined by the appropriate authority for its admissibility.

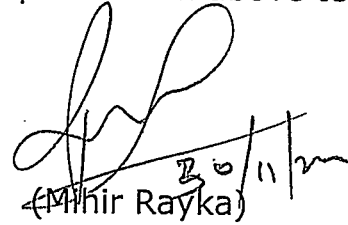


accordance with Section 54 of the CGST Act, 2017 and Rules made thereunder as well as in the light of order of Hon'ble Supreme Court dated 10.01.2022 and CBIC's Notification No. 13/2022-Central Tax dated 05.07.2022.

5. In view of above discussions, the *impugned orders* passed by the *adjudicating authority* are set aside for being not legal and proper to the extent of rejection of refund claims. Accordingly, I allow the appeal of the "*Appellant*" without going into merit of all other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

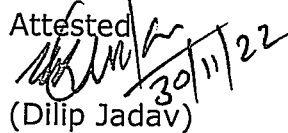
The appeal filed by the appellant stands disposed of in above terms.

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 30.11.2022

Attested

  
30/11/22

(Dilip Jadav)

Superintendent (Appeals)  
Central Tax, Ahmedabad



By R.P.A.D.

To,

M/s. Tulsidas Khimji Pvt. Ltd.,  
313-314, Opp. Sanyas Ashram,  
Dev Nandan Mega Mall, Near M J Library,  
Ashram Road, Ahmedabad - 382 009

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-VI Vastrapur, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File

