



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- 20230264SW000038433A

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/COM/STD/114/2021 -APPEAL / ६१७६ - ६८
 ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-227/2022-23**
 दिनांक Date : **08-02-2023** जारी करने की तारीख Date of Issue : **08-02-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZO24102000087744 DT. 08.10.2020** issued by
 The Deputy Commissioner, CGST, Division-VII, Ahmedabad South

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

| Appellant | Respondent |
|---|---|
| The Deputy Commissioner, CGST, Division-VII, Ahmedabad South | M/s. Orchid Exim India Pvt. Ltd. 608, Akshat Tower, Opp. Rajpath Club, S.G. Highway, Ahmedabad-380015 |

| | |
|-------|---|
| (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 की अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलकर्ता को 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

The Deputy Commissioner, CGST, Division VII, Ahmedabad South has filed the Appeal in Form ST-4 on 23.04.2021, subsequently the Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the '*Appellant/Department*') has filed the present appeal on 25.04.2022 in correct Form GST- APL-03 against the Order No. **ZO2410200087744** dated **08.10.2020** (hereinafter referred to as the '*impugned order*') passed by the Deputy Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the '*Adjudicating Authority*') sanctioning refund to **M/s. Orchid Exim India Pvt. Ltd.**, 608, Sixth Floor, Akshat Tower, Opp. Rajpath Club, S. G. Highway, Ahmedabad-380015 (hereinafter referred to as the '*Respondent*')

2. Briefly stated the fact of the case is that the '*Respondent*' registered under GSTIN 24AABCO1183E1ZV has filed refund claim for Rs.10,65,660/- for the tax paid in the month of August 2017, vide ARN No. AA240820073721 dated 25.08.2020 as prescribed CBIC circular No. 17/17/2017-GST dated 15.11.2017 on account of tax paid on an intra state supply which is subsequently held to be interstate supply and vice versa. After due verification, the *adjudicating authority* vide *impugned order* sanctioned refund to the *respondent*. During the review of the said refund claim the department has observed that the claimant has filed refund claim on account of tax paid on an intra-state supply which is subsequently held to be interstate supply and vice versa of the tax paid in the month of August, 2017 of Rs.10,65,660/- and the said claim has been sanctioned by the sanctioning authority vide order No. ZO2410200087744 dated 08.10.2020 in the form of GST-RFD-06. However, on going through the refund claim, it has been noticed that the claim is for the month of August, 2017 and was filed on 25.08.2020 i.e. after expiry of two years from the relevant date under sub Section (1) of Section 54 of CGST Act, 2017 read with Notification No. 02/2019- Central Tax dated 29.01.2019 read with CGST Amendment Act, 2018. Accordingly, the department has observed that the refund application is time bared. Thus there is erroneously sanction of refund of Rs.10,65,660/- to the *respondent* which is required to be recovered along with interest. In view of above the *appellant/department* filed the present appeal on the following grounds:

- i. *The claim is for the month of August, 2017 and was filed on 25.08.2020 i.e. after expiry of two years from the relevant date (i.e. time barred)*

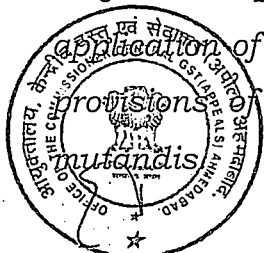


view of Sub Section (1) of Section 54 of CGST Act, 2017 read with Notification No. 02/2019- Central Tax dated 29.01.2019 read with CGST Amendment Act, 2018.

- ii. In view of the above facts & definition of relevant date, it appears that adjudicating authority has failed to consider the relevant date of filing the refund claim as per above definition the due date of filing of refund claim will be two years from due date of the furnishing of return under section 39(1) of CGST Act, 2017 i.e. on or before the twentieth day of succeeding month. In the instant case claimant has filed refund claim on 25.08.2020 for the tax paid in the month of August, 2017, while the refund for the month of August, 2017 can be filed on or before 19.09.2019 i.e. within 2 year from the due date for furnishing of return under Section 39(1) of CGST Act, 2017.
- iii. Adjudicating authority has erred in sanctioning refund claim amounting to Rs.10,65,660/- (Rs. Ten Lakh Sixty Five Thousand Six Hundred and Sixty Only) to the Respondent under Sub-section (5) of Section 54 of CGST Act, 2017, by not considering the time limit of filing refund claim under sub section (1) of Section 54 of CGST Act, 2017.

3. Personal hearing in the present appeal was held on 24.11.2022 wherein Ms. Riya Shah, authorized representative appeared on behalf of the Respondent. During personal hearing she has submitted additional submission and stated that they have nothing more to add to their written submissions made till date. The Respondent in the aforesaid additional submission has stated that -

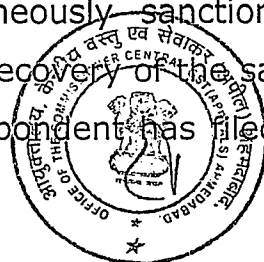
- i. They had paid IGST Rs.10,65,660/- in Aug-17 in GSTR 3B on Gujarat Ambuja Bill which was previously received a Interstate Place of Supply and shown in GSTR-1 of Aug month Also, then after it has been amended in October by Intrastate Supply so they have amended in GSTR-1 of January Month as Intra State supply, at the time of filing of F.Y. 2017-18 GSTR-09 in December 19 it is found that CGST or SGST Payable So, it has been paid through DRC-03 Challan and IGST become Refundable under Section 19 of IGST Act.
- ii. Section 54 is not mentioned as such in sub-rule (1) of Rule 89; refund under section 77 of CGST/SGST Act or section 19 of IGST Act, as the case may be are specifically covered under Rule 89(2)(j). There is no mention of application of the provisions of section 10(5), 21, 35(6) & 129(2) etc. where provisions of certain other section have been made applicable mutatis mutandis



- iii. Mention of “**refund of tax in pursuance of section 77**” in section 54(8)(d) is apparently clarificatory to the fact that merely collecting of tax amount which was paid in wrong head(s)(CGST+SGST/UTGST instead of IGST or vice versa u/s 77 CGST Act or u/s 19 of IGST Act) does not debar the person from claiming the refund on “unjust enrichment” principle as he has now paid tax in the correct head(s) which was already paid in wrong head(s). No enrichment is there. Section 77 & 19 clearly stipulate that **No interest is demandable** when the payment is made under the correct head as the tax amount.
- iv. Previously before Circular no. 162/18/2021-GST There is no time limit specified in section 77 of CGST Act within which the supply can.. Subsequently held to be inter-State supply” or in section 19 of IGST Act to hold a supply as “intra-state supply’. Therefore, in view of this no limitation appears to be there in section 77 of CGST Act or section 19 of the IGST Act as the case may be which are directly covered under Rule 89 of CGST Rules as made applicable to IGST also and SGST Rule respective Rules. They are of this humble view the provisions which are not there, should not be invented.
- v. After amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under section 77 of CGST Act/section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No. 35/2021-Central Tax dated 24.09.2021, the refund application under section 77 of the CGST Act/ Section 19 of IGST Act, 2017 can be filed before the expiry of two years from the date of issuance of the said notification i.e. from 24.09.2021.
- vi. In view of above submissions, the respondent submitted that there is no delay in Refund application and there is no wrongfully Refund claimed.

Discussion and Findings:

4(i). I have carefully gone through the facts of the case, grounds of appeal, submissions made by the Respondent and documents available on record. I find that the present appeal is filed to set aside the *impugned order* wherein the *adjudicating authority* has erroneously sanctioned refund of Rs.10,65,660/- to the *respondent* and to order recovery of the same along with interest. The grounds in appeal is that the respondent has filed claim for the



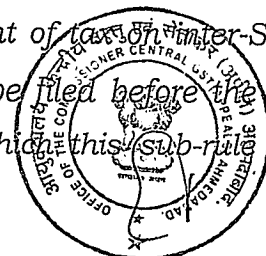
month of August, 2017 on 25.08.2020 i.e. after expiry of two years from the relevant date (i.e. time barred) in view of Sub Section (1) of Section 54 of CGST Act, 2017 read with Notification No. 02/2019- Central Tax dated 29-01-2019 read with CGST Amendment Act, 2018.

4(ii). I find that the Respondent in the present appeal contended that they had paid IGST of Rs.10,65,660/- considering the supply as Interstate supply in the month of August 2017. Subsequently they held the said supply as Intrastate supply in the month of October and amended the same in the GSTR 1 of January month. Thereafter, while filing GSTR-09 of F.Y. 2017-18 in the month of December 2019 they found that CGST & SGST is payable. Accordingly, they generated DRC-03 dated 30.01.2020 and paid the CGST Rs.5,32,830/- & SGST Rs.5,32,830/- by debiting Cash Ledger, making Debit Entry No. DC2401200479372 dated 30.01.2020. Consequently, they filed the present refund claim on 25.08.2020.

4(iii). Further, I find that the Respondent is contended that their refund claim is covered under Section 19 of IGST Act, 2017 and therefore, the time limit for filing refund as specified under Section 54 of the CGST Act, 2017 doesn't apply. The Respondent has further contended that Section 54 is not mentioned as such in sub-rule (1) of Rule 89; refund under section 77 of CGST/SGST Act or section 19 of IGST Act, as the case may be are specifically covered under Rule 89(2)(j). The Respondent has also referred the Notification No. 35/2021 and Circular No. 162/18/2021-GST dated 25.09.2021. The relevant para of Notification No. 35/2021-Central Tax dated 24.09.2021 is reproduced as under :

(6) In rule 89 of the said rules, - (i) in sub-rule (1), with effect from the date as may be notified, after the words "may file", the words ", subject to the provisions of rule 10B," shall be inserted;

*(ii) after sub-rule (1), the following sub-rule shall be inserted, namely:-
 "(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner: Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.";*



Further, I find it pertinent to go through the CBIC's Circular No. 162/18/2021-GST dated 25.09.2021. The relevant para of the Circular is reproduced as under :

4. The relevant date for claiming refund under section 77 of the CGST Act/ Section 19 of the IGST Act, 2017

4.1 Section 77 of the CGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, is subsequently held as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of the CGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") vide notification No. 35/2021-Central Tax dated 24.09.2021.

4.2 The aforementioned amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No.35/2021-Central Tax dated 24.09.2021, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021.

4(iv). On going through the above, I find that in case of payment made under correct head before issuance of Notification No. 35/2021-Central Tax dated 24.09.2021 the refund application under Section 77 of the CGST Act / Section 19 of the IGST Act can be filed before expiry of two years from the date of issuance of said notification i.e. from 24.09.2021.

Further, I find that the CBIC vide above Circular has clarified that as per newly inserted sub-rule (1A) after sub-rule 1 of Rule 89 of the CGST Rules, 2017 refund under Section 77 of CGST Act/Section 19 of IGST Act can be claimed within two years from the payment of tax under correct head. In this regard, I find that in the present matter the Respondent has made payment under correct head on 30.01.2020 and filed refund application on 25.08.2020.

4(v). In view of above, I find that the in the present matter the 'Respondent' has made the payment under correct head before issuance of



Notification No. 35/2021 and therefore, eligible to file refund application within two years from 24.09.2021. Further, I find that tax paid under correct head on 30.01.2020 and filed refund application on 25.08.2020 so, I find that as per newly inserted sub-rule refund application is filed within two years from the date of payment of tax under correct head.

Therefore, in view of foregoing, in the present matter the refund application for refund of wrongly paid IGST of Rs.10,65,660/- filed on 25.08.2020, hence, it is found to be filed within the time limit in the light of above Circular and Notification.

5. In view of the above discussions, I do not find any force in the contentions of the 'Appellant/Department'. Accordingly, I find that the *impugned order* passed by the *adjudicating authority* is correct and as per the provisions of GST law. Consequently, I do not find any reason to interfere with the decision taken by the "Adjudicating Authority" vide "Impugned Order". Accordingly, I upheld the "Impugned Order" and reject the appeal filed by the 'Appellant/Department'.

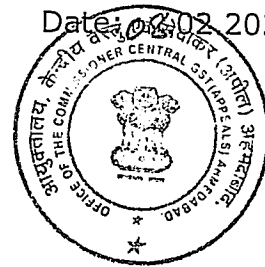
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 06/02/2023



Attested
(Dhiru Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

To,
The Assistant / Deputy Commissioner,
CGST, Division - VII, Ahmedabad South.

Appellant

M/s. Orchid Exim India Pvt. Ltd.,
608, Sixth Floor, Akshat Tower, Opp. Rajpath Club,
S. G. Highway, Ahmedabad-380015

Respondent

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-VII, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

