



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- 20230264SW000000C25F

रजिस्टर्ड डाक ए.डी. द्वारा

क : फाइल संख्या : File No : GAPPL/ADC/GSTD/205/2022 -APPEAL / 8248 - 53

ख : अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-234/2022-23**
दिनांक Date : **10-02-2023** जारी करने की तारीख Date of Issue : **13-02-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग : Arising out of Order-in-Original No. **ZX2410210365367 DT. 29.10.2021** issued by
The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South

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

Appellant	Respondent
The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South	M/s. Alpine Wellness LLP, Corporate House-4, Parshwanath Business Park, Nr. Prahladnagar Garden, 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 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**Brief Facts of the Case :**

The following appeal has been filed by the Assistant Commissioner, CGST, Division - VIII, Ahmedabad South (hereinafter referred as '*appellant*' / '*department*') in terms of Review Order issued under Section 107(2) of the CGST Act, 2017 (hereinafter referred as '*the Act*') by the Reviewing Authority against RFD-06 Order (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, CGST, Division - VIII, Ahmedabad South (hereinafter referred as '*adjudicating authority*') in the case of **M/s. Alpine Wellness LLP**, Corporate House-4, Parshwanath Business Park, Nr. Prahladnagar Garden, Ahmedabad - 380015 (hereinafter referred as '**Respondent**').

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date
GAPPL/ADC/GSTD/205/2022- APPEAL Dated 12.04.2022	70/2021-22 Dated 25.03.2022	ZX2410210365367 Dated 29.10.2021

2. Brief facts of the case are that the '*Respondent*' holding GSTN No. 24AAUFA6262E1ZE had filed refund claim of Rs.6,09,116/- for the period April 2019 to September 2019 for ITC accumulated due to export of service without payment of duty vide ARN No. AA2410210999735 dated 26.10.2021 under Rule 89(4) of the CGST Rules, 2017 read with Section 54(3) of the CGST Act, 2017. The said refund claim was sanctioned by the *adjudicating authority* vide Order No. ZX2410210365367 dated 29.10.2021 (RFD 06).

During Review of the 'Impugned Order' dated 29.10.2021 the department has observed as under :

3(i). During review of said refund claim, it was observed that the claimant has filed refund claim on account of ITC accumulated due to export of service without payment of tax for the period from April 2019 to September 2019 vide ARN dated 26.10.2021 which was sanctioned by the adjudicating authority vide Order No. ZX2410210365367 dated 29.10.2021. The *adjudicating authority* has erroneously sanctioned the claim instead of rejecting the same in accordance with Section 54(1) of the CGST Act, 2017. It is noticed that the claim has been filed on 26.10.2021 for ITC accumulated due to export of services without payment of tax for the period from April 2019 to September 2019. It is



pertinent to note that the time limit for filing a refund claim under Section 54(1) is two years from the relevant date.

3(ii). It is noticed that the claimant has raised invoices for export of services for the period April 2019 to September 2019 and the payment for the services have also been received from 03.04.2019 to 04.10.2019. Thus all the eleven invoices have been issued before 01.10.19; and the total payment for all the eleven invoices have been received by 04.10.2019. Therefore, relevant date in the present case comes to 04.10.2019, which is the last date of receipt of the payment in foreign exchange; and refund should have been filed by 03.10.2021, i.e. within two years from the relevant date. However, the present claim is filed on 26.10.2021. Thus, the refund claim is time barred. Therefore, the *adjudicating authority* has failed to consider the limitation aspect and erroneously sanctioned the claim which was time barred.

4. In view of above, the *appellant/department* has filed the present appeal on the following grounds:

- i. *It is noticed that the present claim has been filed on 26.10.2021 for ITC accumulated due to export of services without payment of tax for the period April 2019 to September 2019. It is pertinent to note that the time limit for filing a refund claim under Section 54(1) is two years from the relevant date.*
- ii. *The relevant date in the present case as prescribed in the explanation (2)(c) to Section 54 of the CGST Act, 2017 is 04.10.2019, which is the last date of receipt of the payment in foreign exchange; and refund should have been filed by 03.10.2021, i.e. within two years from the relevant date. However, the present claim is filed on 26.10.2021. Thus, the adjudicating authority has failed to consider the limitation aspect and erroneously sanctioned the claim which was time barred. Therefore, the Order No. ZX2410210365367 dated 29.10.2021 (RFD 06), is required to be set aside and refund of Rs.609116/- sanctioned erroneously, is required to be recovered along with interest.*
- iii. *In view of above grounds the appellant has made prayer to set aside the impugned order wherein the adjudicating authority has erroneously sanctioned Rs.6,09,116/- instead of rejecting the same under Section 54(1) of CGST Act, 2017 ; to pass an order directing the said original authority to demand and recover the amount erroneously*



refunded of Rs.6,09,116/- with interest; to pass any other order(s) as deemed fit in the interest of justice.

Personal Hearing :

5. Personal Hearing in the matter was held on 28.12.2022 wherein Mr. Nikhil Jani, C.A. was appeared on behalf of the 'Respondent' as authorized representative. During PH he has submitted their submission dated 28.12.2022 and stated that they have nothing more to add to their written submissions made till date. The Respondent in their submission dated 28.12.2022 submitted that -

- i. *They have made first application for refund for period from April 2019 to September 2019 on 09.04.21, which was well within time as per Section 54(1) and Notification No. 15/2021-Central Tax. The said application was rejected on the grounds that supporting documents not attached and advised them to file fresh application. Accordingly, they have filed refund application for second time on 15.04.2021, however again for same grounds rejected and advised to file fresh refund application.*
- ii. *Accordingly, third time they filed refund application on 22.06.21 which was within time as per Section 54(1) and Notification No. 15/2021. Again rejected on 06.07.21 on same grounds of documents not attached and advised to file fresh application. The last date for filing the fresh application now would be 04.11.21 considering Noti. No. 15/2021-Central Tax. When again filed fresh refund application for forth time on 30.09.21, the said application was also rejected on 11.10.21 on the grounds that supporting documents not attached and declaration & Annexure B as per Circular No. 125/44/2019-GST not attached. Also again advised to file fresh refund application. The last date for filing fresh refund application now would be 15.11.21 considering Notification No. 15/2021-Central Tax.*
- iii. *At the last they made final refund application on 26.10.2021 which is well within time limit as per Section 54(1) of the CGST Act, 2017 and Notification No. 15/2021-Central Tax. The assessing officer has accepted the refund application and issued refund order dated 29.10.2021.*
- iv. *They referred Notification No. 13/2022 - Central Tax and submitted that they can file refund application for the period from April 2019 to September 2019 on or before 30.09.2023. Whereas they have filed*



the refund application in question on 26.10.2021, hence, it cannot be considered time barred.

Discussion and Findings :

6. I have carefully gone through the facts of the case, grounds of appeal, submission made by the *Respondent* and documents available on record. I find that the *Respondent* has filed the refund application of accumulated ITC due to export of service without payment of duty on 26.10.2021 for the period from April 2019 to September 2019. The said refund claim was sanctioned to the *Respondent* vide *impugned order*. By referring the provisions of Section 54 of the CGST Act, 2017, the *department* in the present appeal has mainly contended that said refund claim was time barred and therefore, the refund claim so erroneously sanctioned by *adjudicating authority* is required to be recovered with interest.

7. I find that the *department* is mainly relying upon the provisions of Section 54 in the present appeal. Accordingly, the same is 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 ¹[such form and] manner as may be prescribed.

Explanation.- For the purposes of this section,-

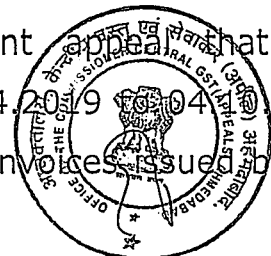
(2) "**relevant date**" means-

(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 [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;

The *department* has contended in the present appeal that the *Respondent* has received the payment from 03.04.2019 to 04.04.2019 for the services so provided; that all the eleven invoices issued before



01.10.2019 and total payment for all eleven invoices have been received by 04.10.2019. Accordingly, the *department* in the present appeal contended that the relevant date in view of above provisions comes to 04.10.2019; therefore the last date for filing of refund application arrive 03.10.2021 i.e. two years from relevant date. The present refund application is filed on 26.10.2021.

8. I find that in support of their claim the *Respondent* has referred the CBIC's Notification No. 13/2022-Central Tax dated 05.07.2022. The relevant para is reproduced as under :

(iii) excludes the period from the 1st day of March, 2020 to the 28th 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 1st day of March, 2020.*

In view of above, 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. Whereas, in the subject case, the *department/appellant* has determined the relevant date as 04.10.2019 and accordingly, the Refund application is required to be filed by 03.10.2021 considering two years from relevant date.

9. However, in the above context, I find that the Hon'ble Supreme Court has passed order on 10.01.2022 in matter of Miscellaneous Application No. 21 of 2022 in M.A. 665 of 2021, in SMW(C) No. 3 of 2020. Hon'ble Supreme Court vide Order dated 10.01.2022 ordered that for computing period of limitation for any suit, appeal, application or proceedings the period from 15.03.2020 till 28.02.2022 shall stand excluded and consequently balance period of limitation remaining as on 03.10.2021 if any, shall become available with effect from 01.03.2022 and that in cases where the limitation would have expired during the period from 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.

10. In view of above, I find that in the present matter the refund claim was filed for the period April'19 to September'19 on 26.10.2021. Further, I find that the *Respondent* has received the



payment between 03.04.2019 to 04.10.2019 in connection with export of services. Therefore, I find that in the present matter the relevant date for filing the refund application is falling within the period of 15.03.2020 to 28.02.2022. 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 am of the view that the present refund claim of Rs.6,09,116/- filed on 26.10.2021 is well within the time limit prescribed under Section 54 of the CGST Act, 2017.

11. 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.

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

By R.P.A.D.
To,
The Assistant / Deputy Commissioner,
CGST, Division - VIII, Ahmedabad South.

M/s. Alpine Wellness LLP,
Corporate House-4, Parshwanath Business Park,
Nr. Prahladnagar Garden, Ahmedabad - 380015

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-VIII, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.

(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 10.02.2023



Appellant

Respondent



