



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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रजिस्टर्ड डाक ए.डी. द्वारा

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फाइल संख्या : File No : GAPPL/ADC/GSTP/1523/2022 -APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-238/2022-23**

दिनांक Date : **21-02-2023** जारी करने की तारीख Date of Issue : **21-02-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

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Arising out of Order-in-Original No. **ZT2411200169945 DT. 12.11.2020** issued by
The Assistant Commissioner, CGST, Division-V, Odhav, Ahmedabad South

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

**M/s. Microtrack Surgicals, A-38, Adarsh Industrial Estate-II,
B/h. Ashish Cinema, Odhav, Ahmedabad-382415**

(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



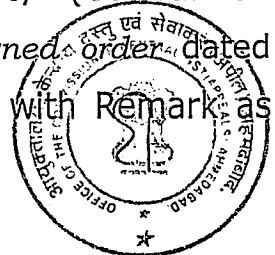
ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Microtrack Surgicals, A-38, Adarsh Industrial Estate – II, B/h. Ashish Cinema, Odhav, Ahmedabad – 382 415 (hereinafter referred as '*Appellant*') has filed the appeal under Rule 108 of the CGST Rules, 2017 against the Order No. ZT2411200169945 dated 12.11.2020 (hereinafter referred as '*impugned order*') issued in the form RFD-06 by the Assistant Commissioner, CGST, Division – V Odhav, Ahmedabad South (hereinafter referred as '*adjudicating authority*').

2(i). Briefly stated the facts of the case is that the '*Appellant*' is holding GST Registration - GSTIN No.24AAFFM3896H1Z1 has filed the present appeal on 06.05.2022. The '*Appellant*' had filed refund application on account of "*Refund of ITC on Export of Goods & Services without Payment of Tax*" vide ARN No. AA240820017402T dated 07.08.2020 for amount of Rs.4,97,544/- (C. Tax Rs.248772/- + S. Tax Rs.248772/-) for the period from June 2018 to March 2019. In response to said refund application a deficiency memo was issued by the proper officer on 27.08.2020 to the '*Appellant*' and it was advised to file fresh refund application. The '*Appellant*' had accordingly, filed fresh refund application vide ARN AA240820084038B dated 28.08.2020. Again a deficiency memo was issued vide RFD-03 dated 22.09.2020 and advised to file fresh refund application after fulfilling the deficiencies mentioned in the memo. The '*Appellant*' had thereafter filed fresh refund application for Rs.4,97,544/- vide ARN AA240920079172C dated 23.09.2020.

2(ii). In response to said refund application dated 23.09.2020 a "*Notice for rejection of application for refund*" was issued in FORM-GST-RFD-08 dated 05.11.2020 to the '*Appellant*'. It was proposed that refund applications is liable to be rejected for the reasons "*Wrong ITC Claim*" with Remark as "*PLEASE PROVIDE VALUE OF ZERO RATED SUPPLY IN FOB TERMS, PLEASE PROVIDE AMOUNT OF ITC IN ANNEXURE B, PLEASE CLARIFY WHETHER PROVISIONS OF RULE 89(4) HAVE BEEN FOLLOWED*"

Thereafter, the *adjudicating authority* has sanctioned Refund of Rs.50,858/- and rejected the refund claim of Rs.4,46,686/- (Central Tax Rs.197914/- + State/UT Tax Rs.248772/-) vide *impugned order* dated 12.11.2020 on the ground '*Delay in Refund application*' with Remark as '*SANCTIONED*'.



2(iii). Being aggrieved with the *impugned order* the *appellant* has filed the present appeals on 06.05.2022 wherein stated that –

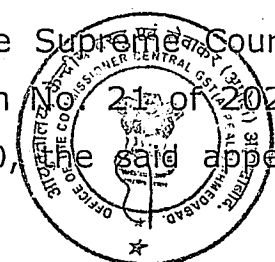
- They have filed refund application on 07.08.2020 for the period June 2018 to March 2019 for Refund of ITC on Export of Goods without payment of Tax for amount of Rs.4,97,544/- [Rs.248772/- (CGST) + Rs.248772/- (SGST)].
- The Ld. Assistant Commissioner has sanctioned refund of Rs.50,858/- and rejected refund of Rs.1,97,914/- (CGST) & Rs.2,48,772/- (SGST). The Refund is rejected on the grounds of 'Delay in Refund Application' as per prescribed time limit under GST Law.
- No any proper descriptive order has been issued as to why partial refund application has been approved. No SCN issued for rejection of refund application, as they have submitted all documents.
- Hon'ble Supreme Court's Order for extension of time limit was attached with refund application, even though, the adjudicating authority partially approved refund application.

In view of above, the *appellant* has made prayer for set aside the *impugned order* and allow their appeal with consequential relief.

3. Personal Hearing in the matter was held on 23.11.2022 wherein Mr. Sanjay S. Patel appeared on behalf of the '*Appellant*' as authorized representative. During P.H. he has 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 "Refund of ITC on Export of Goods & Services without Payment of Tax" for the period from June'18 to March'19 on 07.08.2020 for the amount of Rs.4,97,544/-. In response to said refund application of Rs.497544/-, I find that the adjudicating authority has sanctioned refund of Rs.50,858/- and rejected the remaining amount of refund application of Rs.4,46,686/- (CGST Rs.197914/- + SGST Rs.248772/-) vide impugned order dated 12.11.2020. Against which the present appeal is filed by the Appellant on 06.05.2022 beyond the time limit prescribed under Section 107 of the CGST Act, 2017. However, I find that in view of the order passed by the Hon'ble Supreme Court 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, the said appeal is



considered to be filed within the time limit prescribed under the provisions of the CGST Act, 2017.

4(ii). The adjudicating authority vide impugned order has rejected the partial amount of refund claim of Rs.4,46,686/- considering refund application as time barred in terms of Section 54(1) of the CGST Act, 2017. Since, the refund claim is 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 ¹[such form and] manner as may be prescribed.

Explanation.- For the purposes of this section,-

(2) "relevant date" means-

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

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

⁵[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;]

(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-

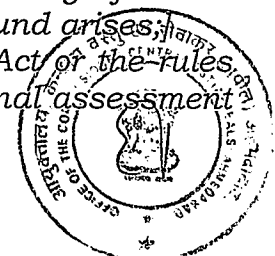
(i) receipt of payment in convertible foreign exchange ⁶[or in Indian rupees wherever permitted by the Reserve Bank of India] , where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) ⁷[in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;]

(f) in the case where tax is paid provisionally under this Act of the rules made thereunder, the date of adjustment of tax after the final assessment thereof;



- (g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
 (h) in any other case, the date of payment of tax.

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 June'18 to March'19 was filed on 07.08.2020. I find that refund application for certain period is filed beyond two years from the relevant date as prescribed under explanation (2) to Section 54 of the CGST Act, 2017.

4(iii). 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

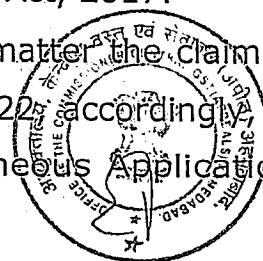
Further, I find that on the subject matter Notification No. 13/2022-Central Tax dated 05.07.2022 has also been issued by the CBIC. The relevant para is reproduced as under :

(iii) excludes the period from the 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.

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 claim was filed for the period June'18 to March'19, 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 claim was filed for the period June'18 to March'19 on 07.08.2020 accordingly following the order of Hon'ble Supreme Court in Miscellaneous Application No. 21 of

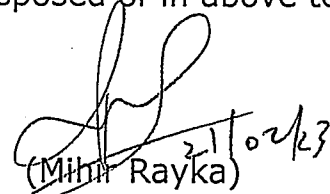


2022 in MA 665/2021 in SMW(C) No. 3/2020 as well as in the light of Notification No. 13/2022-Central Tax dated 05.07.2022, I hold that the rejection of partial amount of refund claim on the ground of time limitation is not legal and proper. Hence, the appeal filed by the appellant succeeds on time limitation 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 proceeding. Therefore, any claim of refund filed in consequence to this Order may be examined by the appropriate authority for its admissibility on merit in 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 order* passed by the *adjudicating authority* is set aside for being not legal and proper to the extent of rejection of refund claim of Rs.4,46,686/- (CGST Rs.197914/- + SGST Rs.248772/-). 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.

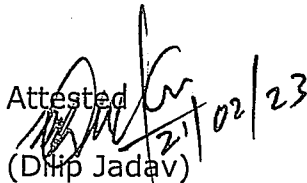
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 21.02.2023

Attested

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

By R.P.A.D.

To,
M/s. Microtrack Surgicals,
A-38, Adarsh Industrial Estate - II,
B/h. Ashish Cinema, Odhav, Ahmedabad - 382 415

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 Dy/Asstt. Commissioner, CGST, Division-V Odhav, Ahmedabad South.
5. The Superintendent (Systems) CGST Appeals, Ahmedabad.
6. Guard File. / P.A. File

