



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

☎ 07926305065-

☎ टेलिफैक्स 07926305136



DIN- 20230364SW000000A940

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2386/2022 -APPEAL 199HS-SK

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-266/2022-23**
दिनांक Date : **27-03-2023** जारी करने की तारीख Date of Issue : **27-03-2023**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

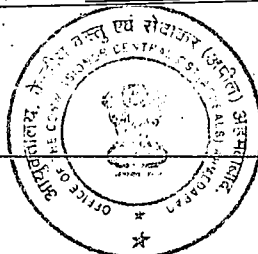
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **WS03/RFD/01/2022-23 DT.20.04.2022** issued by The Assistant Commissioner, CGST, Division-III, Ahmedabad South

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

**Gaurav Chandubhai Pokar of M/s. Bhagwati Enterprise,
Survey No. 49/1, At-Dhamtvan, Ta-Daskroi, Ahmedabad-382435**

(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 .



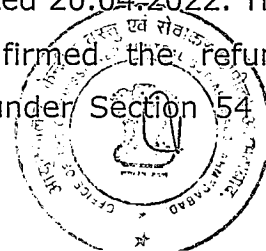
ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Bhagwati Enterprise (Legal Name – Gaurav Chandubhai Pokar), Survey No. 49/1, At – Dhamatvan, Ta. Daskroi, Ahmedabad – 382 435 (hereinafter referred as '**Appellant**') has filed the appeal on 20.07.2022 against the Order No. WS03/RFD/01/2022-23 dated 20.04.2022 (hereinafter referred as '**impugned order**') passed by the Assistant Commissioner, CGST, Division – III (Vatva-II), Ahmedabad South (hereinafter referred as '**Adjudicating Authority**').

2(i). The Brief facts of the case is that the '**Appellant**' holding GST Registration - GSTIN No.24BIBPP2139M1Z6 had filed refund application on account of ITC accumulated due to inverted tax structure for Rs.358460/- for the month of January'18 to March'18. Accordingly, refund of Rs.3,58,460/- was sanctioned vide Order No. ZN2404200248037 dated 13.04.2020. The said Order dated 13.04.20 was challenged by the Revenue Department by filing appeal under Section 107 of the CGST Act, 2017 before the Appellate Authority, CGST Appeals, Ahmedabad. It was contended by Revenue Department in the said appeal that the claimant had filed the refund after expiry of due date in view of Section 54 (1) of the CGST Act, 2017 read with Notification No. 2/2019-Central Tax dated 29.01.19 read with CGST Amendment Act, 2018.

In the said appeal proceedings, the Order vide which refund of Rs.3,58,460/- sanctioned was set aside and departmental appeal was allowed. The Appellate Authority has accordingly passed OIA No. AHM-CGST-001-APP-JC-081/21-22 dated 08.12.2021 and order for recovery of refund erroneously sanctioned with interest under the provisions of CGST Act, 2017 and Rules made there under and corresponding SGST Act, 2017. Accordingly, in view of said OIA the Revenue Department has initiated action for recovery of inadmissible refund of Rs.3,58,460/- as sanctioned erroneously.

2(ii). Since, the Appellate Authority has passed OIA dated 08.12.2021 in favour of the Revenue; the Assistant Commissioner, CGST, Division III, Ahmedabad South has invoked protective demand Show Cause Notice dated 28.06.2021 and passed *impugned order* dated 20.04.2022. The *adjudicating authority* vide *impugned order* has confirmed the refund erroneously sanctioned beyond time limit prescribed under Section 54 of



the CGST Act, 2017 vide RFD-06 Order dated 13.04.20 and ordered for recovery of refund amount erroneously sanctioned to the claimant under provisions of CGST Act, 2017 and corresponding SGST Act, 2017.

2(iii). Being aggrieved with the "impugned order" the 'Appellant' has filed the present appeal on 20.07.2022 on the following grounds -

- The Ld. Assessing authority has erred in passing assessment order raising demand against appellant without properly appreciating the facts and circumstances of the case.
- The Ld. Assessing authority has passed the demand order dated 20.04.22 without providing effective opportunity of being heard. Therefore, order dated 20.04.22 is passed by violating principal of natural justice and therefore required to be set aside in the present appeal.
- The learned Appellate Authority has wrongly passed an order on 09.12.21. The appellant is not agreeing with the order and wants to further challenged the said order before Hon'ble Tribunal. Appellant will file second appeal as and when bench is framed in future under the GST Act. The Demand order dated 20.04.22 is bad in law as the appeal order passed by the appellate authority is sub-judice order.
- The learned assessing authority has wrongly filed an appeal after granting refund to the appellant. The Hon'ble Supreme Court has enhanced the period of limitation and therefore appeal order is wrongly passed without considering the order of the Hon'ble Supreme Court and demand order dated 20.04.22 is also wrongly passed. Moreover, as per NN 13/2022 dated 05.07.22 time limit from 01.03.20 to 28.02.22 is required to be excluded from the calculation of time limit of two years prescribed in Section 54. Therefore, the application made by the appellant in RFD-01 is also within time and demand order dated 20.04.22 and Appeal Order dated 09.12.21 is bad in law and required to be set aside in the present appeal.
- Alternatively, appellant's two months application i.e. February 2018 and March 2018 in form RFD-01 is required to be considered within time and proportionately refund is required to be granted to the appellant.
- Section 50(1) & (3) is not applicable to their case as they always having excess credit of ITC qua refund claimed by them vide RFD-01.
- Interest is always automatic and therefore interest is required to be removed along with demand of tax in the present appeal.

In view of above, the appellant has made prayer as under :



- *Appeal may please be admitted.*
- *Order dated 20.04.22 may please be set aside.*
- *Interest is wrongly charged u/s. 50 of the GST Act required to be removed or reduced in consonance with the tax demand.*
- *Kindly grant interest on refund if appeal is fully or partly allowed in favour of appellant.*
- *Any other just and proper order may be passed as may be deemed fit in the facts and circumstances of the case.*

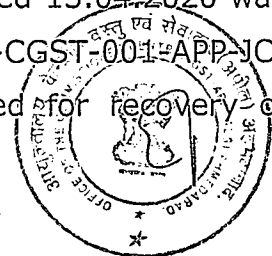
3. Personal Hearing in the matter was held on 25.11.2022 wherein Mr. Samir Siddhapuria, Advocate was appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has submitted that they have nothing more to add to their earlier submissions till date.

Discussion and Findings :

4(i). I have carefully gone through the facts of the case available on records and submissions made by the 'Appellant' in the Appeals Memorandum. I find that the Appellant had claimed refund of "accumulated ITC due to inverted tax structure" and accordingly claim of Rs.3,58,460/- was sanctioned to the Appellant vide order dated 13.04.2020. However, during post audit of said claim it was observed that refund claim is for the period from January'18 to March'18 and filed after the expiry of due date in view of sub section (1) of Section 54 of the CGST Act, 2017. Accordingly, an appeal was filed by the Revenue Department against said order dated 13.04.2020 on the grounds that -

- *As per Section 54 of the CGST Act, 2017, the due date of filing of refund claim will be two years from due date of furnishing of return i.e. on or before twentieth day of succeeding month.*
- *refund claim was filed on 02.04.2020 for the period January 2018 to March 2018, while refund claim for January 2018 can be filed on or before 19.02.20 and for the month of February 2018 on or before 19.03.20 i.e. within two years from the due date for furnishing of return under Section 39(1) of CGST Act, 2017.*
- *In view of above the adjudicating authority has erred in sanctioning refund claim to the claimant without considering time limit of filing of refund claim.*

I find that in the said appeal proceedings the Order dated 13.04.2020 was set aside by the Appellate Authority vide OIA No. AHM-CGST-001-APP-JC-081/2021-22 dated 08.12.2021. Consequently, ordered for recovery of



refund erroneously sanctioned to the claimant along with interest under the provisions of CGST Act, 2017 and Rule made there under and corresponding SGST Act, 2017.

4(ii). Since, the Appellate Authority vide aforesaid OIA dated 08.12.2021 had allowed the appeal of the Department and set aside the order dated 13.04.20 and ordered for recovery of erroneous refund with interest ; the Revenue department has initiated the action for recovery of said time barred refund claim as erroneously sanctioned. Accordingly, I find that the *impugned order* is passed by the *adjudicating authority* for recovery of said inadmissible refund with interest under CGST Act and SGST Act which was erroneously sanctioned beyond time limit prescribed under Section 54 of the CGST Act, 2017.

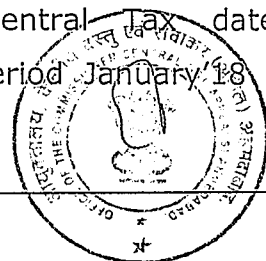
4(iii). Further, I find that the *appellant* in the present appeal has mainly contended that they do not agreeing with the OIA dated 08.12.2021 and they wants to challenge the said OIA before Hon'ble GST Tribunal; accordingly, they will file appeal once the bench is framed in future. I find that in the present appeal the *appellant* has referred the Notification No. 13/2022-Central Tax dated 05.07.2022 issued by CBIC. The relevant para of said notification 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. I find that in the present matter the relevant date for filing the refund application for the month of February'18 & March'18 is falling within the period of 01.03.2020 to 28.02.2022. Accordingly, I am of the view that the refund claim filed on 02.04.2020 for the month of February'18 & March'18 is well within the time limit prescribed under Section 54 of the CGST Act, 2017.

4(iv). Since, the said OIA dated 08.12.2021 was passed before issuance of aforesaid Notification No. 13/2022-Central Tax dated 05.07.2022 it was held that refund claim for the period January 18 to

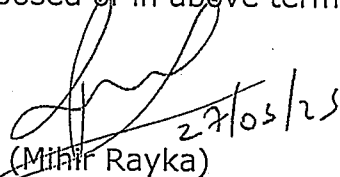


March'18 filed on 02.04.2020 as time barred and ordered for recovery with interest. However, after issuance of aforesaid notification the matter is very much clear and by following the said notification in true spirit, the Revenue Department should have wait for recovery of entire refund claim till the appellant challenged the OIA dated 08.12.21 before the Hon'ble GST Tribunal once it is constituted.

5. In view of the above discussions, I hereby set aside the impugned order to the extent of recovery of refund claim which falls within the time limit under Section 54 of the CGST Act, 2017 in terms of Notification No. 13/2022-Central Tax dated 05.07.22. Accordingly, allowed the appeal to that extent only.

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

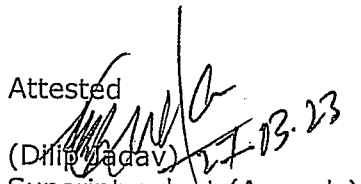
The appeal filed by the *appellant* stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 27.03.2023

Attested


(Dhiraj Dada) 27.03.23
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

To,
M/s. Bhagwati Enterprise
(Legal Name - Gaurav Chandubhai Pokar),
Survey No. 49/1, At - Dhamatvan, Ta. Daskroi,
Ahmedabad - 382 435

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/Asst. Commissioner, CGST, Division-III, Ahmedabad South.
5. The Superintendent (System), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

