



## 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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DIN- 20220664SW0000277E31

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1369/2021 -APPEAL / 1836 - 18M

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-50/2022-23**

दिनांक Date : **14-06-2022** जारी करने की तारीख Date of Issue : **15-06-2022**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZY2407210091053 DT. 07.07.2021**  
issued by Assistant Commissioner, Division IV (Narol), Ahmedabad South

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

**Shri Samir Sureshbhai Patel of M/s. Shivam Manpower Services,  
B 35, New Jashpark Society, Isanpur, Ahmedabad 382443**

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> 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> .



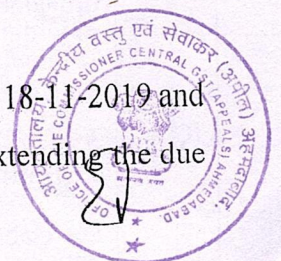
## ORDER IN APPEAL

Shri Samir Sureshbhai Patel of M/s.Shivam Manpower Services, B 35, New Jashpark Society, Isanpur, Ahmedabad 382 443 (hereinafter referred to as the appellant) has filed the present appeal on dated 22-7-2021 against Order No.ZY2407210091053 dated 7-7-2021 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, Division IV (Narol), Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24APLPP9673C2ZI has filed refund application for refund of Rs.3,81,700/- under head 'Other' on dated 31-3-2021 for the period 2017-2018. The appellant was issued show cause notice reference No.ZQ2405210485617 dated 27-5-2021 for rejection of the claim on the ground of delay in refund application and application is time barred. The adjudicating authority vide impugned order held that refund of Rs.3,81,700/- is inadmissible to the appellant due to delay in refund application and that the claim is time barred.

3. Being aggrieved the appellant filed the present appeal on the following grounds:

- i. The adjudicating authority has erred in rejecting refund claim under Section 54 of CGST Act, 2017.
- ii. They had made supply to a Unit located in SEZ which has not been denied by the adjudicating authority. As per explanation 2 (h) to Section 54 of CGST Act, 2017 they are legally required to file refund application within a period of 2 years from the date of payment of GST.
- iii. That while filing GSTR3B for the tax period July to January 2018 an amount of Rs.2,90,512/- has been paid in cash towards the said supplied but instead of showing the same in Table No.3.1 (b) of GSTR3B in the particulars of Zero rated outward supplies as the transaction tantamount to zero rated supplies as per Section 16 of IGST Act, 2017 read with Section 2 (23) of IGST Act, 2017, the same was shown in Table No.3.1 (a) of GSTR3B filed for the said tax period under outward taxable suppliers other than zero rated supplies. Also, instead of paying IGST by mistake they had paid CGST and SGST in cash. Under such circumstance the portal did not allow the appellant to file refund application because of the system validation check placed by the system. Also, while filing GSTR1, inadvertently missed out showing the transaction as zero-rated supplies with tax payment.
- iv. Referring to CBIC Circular No.45/19/2018-GST dated 30-5-2018, the appellant contended that as the amount paid under the segment of CGST and SGST the portal didn't allow them to file refund application under the said category on the basis of Circular.
- v. The appellant also relied upon CBIC Circular No.125/44/2019-GST dated 18-11-2019 and CBIC Circular NO.147/03/2021-GST was issued further clarifying and extending the due date for filing the said refund claims upto 31-3-2021.





- vi. Under such circumstance based on the above Circulars clarifying that the refund should not be denied because of technical glitches. They right deserve the entire refund though CGST and SGST paid instead of IGST as the very intention of the Government is not export tax along with supplies of goods and services in case of zero-rated supplies.
- vii. In view of above submissions, the appellant requested to set aside the impugned order and grant refund to them.

4. Personal hearing was held on dated 30-5-2022. Shri Dhruvank Parikh, authorized representative appeared on behalf of the appellant on virtual mode. He stated that he has nothing more to add to their written submission till date.

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. I find that in this case refund claim was filed on dated 31-3-2021 for refund of tax paid on supply made to SEZ Unit during the period July 2017 to March 2018. As per Section 54 of CGST Act, 2017, the application for refund of tax is to be filed within two years from the relevant date. As per clause (h) of Explanation 2 to Section 54 the relevant date for refund of tax paid on supply made to SEZ unit is date of payment of tax. The appellant in their grounds of appeal themselves stated that as per explanation 2 (h) to Section 54 of CGST Act, 2017 they were legally required to filed refund application without a period of two years from the date of payment of GST in the impugned case and that they had filed refund application post two years of time period as provided in the Act. Accordingly, considering the date of payment of tax as relevant date the due date for filing refund application in the subject case falls before April 2020. Therefore, undoubtedly, the claim filed on 31-3-2021 for the tax period July 2017 to March 2018 is beyond the time limit prescribed under Section 54 of CGST Act, 2017.

6. I find from the grounds of appeal that the appellant further submitted that for the tax period July 2017 to January 2018 involving refund of Rs.2,90,512/-, they had made error in showing supply made to SEZ units on payment of tax under Table 3.1 (a) of GSTR3B instead of under Table 3.1 (b) in GSTR3B returns and also paid tax under head CGST and SGST instead of paying under head IGST. Therefore, relying upon Circular No.45/19/2018-GST dated 30-5-2018, Circular NO.125/44/2019-GST dated 18-11-2019 and Circular No.147/03/2021-GST dated 12-3-2021, the appellant sought relief in appeal to set aside the impugned order and allow refund. However, with regard remaining amount of refund of Rs.91,188/- no submission was made by the appellant.

7. I have gone through all the above three Circular wherein clarification on the subject issue is given as under:

- i) **Circular No.45/19/2018-GST dated 30-5-2018;**

**4. Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit;**

4.1 It has been represented that while filing the return in FORM GSTR-3B for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero rated supplies made to a Special Economic Zone developer or a Special



*Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of FORM GSTR-3B whilst they have shown the correct details in Table 6A or 6B of FORM GSTR-1 for the relevant tax period and duly discharged their tax liabilities. Such registered persons are unable to file the refund application in FORM GST RFD-01A for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an in-built validation check in the system which restricts the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cess mentioned under column 3.1(b) of FORM GSTR-3B (zero rated supplies) filed for the corresponding tax period.*

*4.2 In this regard, it is clarified that for the tax periods commencing from 01.07.2017 to 31.03.2018, such registered persons shall be allowed to file the refund application in FORM GST RFD-01A on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period.*

## **2. Circular NO.125/44/2019-GST dated 18-11-2019;**

### **Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit**

25. It has been represented that while filing the return in FORM GSTR-3B for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero-rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of FORM GSTR-3B whilst they have shown the correct details in Table 6A or 6B of FORM GSTR-1 for the relevant tax period and duly discharged their tax liabilities. Such registered persons were earlier unable to file the refund application in FORM GST RFD-01A for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an in-built validation check in the system which restricted the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cess mentioned under column 3.1(b) of FORM GSTR3B (zero rated supplies) filed for the corresponding tax period.

26. In this regard, it is clarified that for the tax periods commencing from 01.07.2017 to 30.06.2019, such registered persons shall be allowed to file the refund application in FORM GST RFD-01 on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period.

## **Circular No.147/03/2021-GST dated 12-3-2021:**

### **3. Extension of relaxation for filing refund claim in cases where zero-rated supplies has been wrongly declared in Table 3.1(a).**

3.1 Para 26 of Circular No. 125/44/2019-GST dated 18th November 2019 gave a clarification in relation to cases where taxpayers had inadvertently entered the details of export of services or zero





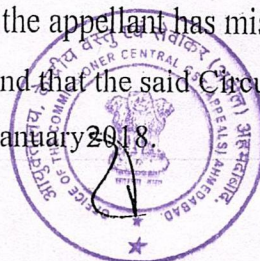
rated supplies to a Special Economic Zone Unit/Developer in table 3.1(a) instead of table 3.1(b) of FORM GSTR-3B of the relevant period and were unable to claim refund of the integrated tax paid on the same through FORM GST RFD-01A. This was because of a validation check placed on the common portal which prevented the value of refund of integrated tax/cess in FORM GST RFD-01A from being more than the amount of integrated tax/cess declared in table 3.1(b) of FORM GSTR-3B. The said Circular clarified that for the tax periods from 01.07.2017 to 30.06.2019, such registered persons shall be allowed to file the refund application in FORM GST RFD-01A on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the tables 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period.

3.2 Since the clarification issued vide the above Circular was valid only from 01.07.2017 to 30.06.2019, taxpayers who committed these errors in subsequent periods were not able to file the refund applications in FORM GST RFD-01A/ FORM GST RFD-01.

3.3 The issue has been examined and it has been decided to extend the relaxation provided for filing refund claims where the taxpayer inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/Developer in table 3.1(a) instead of table 3.1(b) of FORM GSTR-3B till 31.03.2021. Accordingly, para 26 of Circular No. 125/44/2019-GST dated 18.11.2019 stands modified as under:

“26. In this regard, it is clarified that for the tax periods commencing from 01.07.2017 to 31.03.2021, such registered persons shall be allowed to file the refund application in FORM GST RFD-01 on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period.”

8. I find that the above Circulars deals with the issue in which the registered persons has made supply SEZ on payment of integrated tax but shown the details of such supply in column 3.1(a) in GSTR3B returns instead of under column 3.1 (b), which prevented them from filing refund application in Form RFD 01 in GST common portal because of in-built validation check in the system. In such instances, CBIC vide above Circulars has allowed such registered persons to file refund application in Form GST RFD 01/01A on the common portal. The said facility was initially provided for the period from 1-7-2017 to 31-3-2018 vide Circular dated 30-5-2018, which was extended till 30-6-2019 vide Circular dated 18-11-2019 and further extended till 31-3-2021 vide Circular dated 12-3-2021. However, nowhere in the above Circulars it was clarified that such refund applications can be filed beyond two years from the relevant date. In other words, the above Circular provide relaxation only for filing refund application in Form GST RFD 01/01A in common portal till 31-3-2021 but does not provide any extension/relaxation in time limit for filing refund application. Therefore, I find that the appellant has mis-interpreted the clarification issued vide above Circulars to the subject issue and that the said Circulars no way supports their stand for refund claim for the period July 2017 to January 2018.

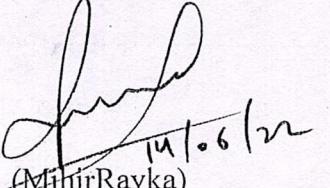




9. In view of above, I hold that the refund application filed on 31-3-2021 for the claim period July 2017 to March 2018 is beyond the time limit stipulated under Section 54 of CGST Act, 2017. Therefore, I do not find any infirmity in the impugned order passed by the adjudicating authority rejecting refund on time limitation ground. Accordingly, I upheld the impugned order and reject the appeal filed by the appellant.

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

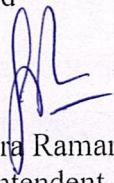
10. The appeals filed by the appellant stands disposed of in above terms.

  
(MinirRayka)

Additional Commissioner (Appeals)

Date :

Attested

  
(Sankara Raman B.P.)  
Superintendent  
Central Tax (Appeals),  
Ahmedabad



By RPAD  
To,  
Shri Samir Sureshbhai Patel  
of M/s.Shivam Manpower Services,  
B 35, New Jashpark Society,  
Isanpur, Ahmedabad 382 443

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division IV (Narol), Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- ✓ 6) Guard File
- 7) PA file

