



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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फाइल संख्या : File No : GAPPL/ADC/GSTP/1839/2021 -APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-54/2022-23

दिनांक Date : 16-06-2022 जारी करने की तारीख Date of Issue : 16-06-2022

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. ZX2405210281195 DT. 18.05.2021

issued by Deputy Commissioner, CGST, Division-VII (Satellite), Ahmedabad South

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

M/s. Numex Chemical Corporation, Ground Floor, Shop No. 4,

Medicine Market Paldi, Ahmedabad-380006

(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 .



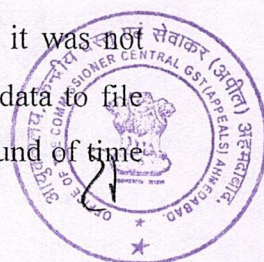
ORDER IN APPEAL

M/s.Numex Chemical Corporation, Ground Floor, Shop NO.4, Medicine Market Paldi, Ahmedabad 380 006 (hereinafter referred to as the appellant) has filed the present appeal on dated 19-8-2021 against Order No.ZX2405210281195 dated 18-5-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, -CGST, Division VII (Satellite), Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAAFN1292M1Z8 has filed refund claim on dated 23-3-2021 for refund of Rs.22,02,443/- on account of supplies made to SEZ Unit/SEZ developer without payment of tax for the period April 2018 to March 2019. The appellant was issued deficiency memo No.ZV2404210099227 dated 8-4-2021 wherein deficiency pointed out was mentioned as 'Other' and that the time period of refund application is within two years. The appellant filed fresh refund application dated 20-4-2021 against which another deficiency memo No.ZZ2404210226794 dated 20-4-2021 was issued pointing deficiency that supporting documents not attached and Annexure B as per Circular NO.135/05/2020-GST dated 31-3-2020 has not been submitted. The appellant then filed fresh application on dated 23-4-2021, against which the appellant was issued show cause notice No.ZX2405210018651 dated 3-5-2021 for rejection of the claim on the ground of delay in refund application. The appellant filed reply to the show cause notice relying on Hon'ble Supreme Court Order in suo motu writ petition (Civil) No.3 of 2020 dated 8-3-2021 adjudicating authority vide impugned order held that refund is inadmissible to the appellant due to delay in refund application and that the refund claim is time barred under Section 54 of CGST Act, 2017 and that there are no such direction from Board/Ministry in respect to Hon'ble Supreme Court suo motu writ petition (Civil) No. 3 of 2020.

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

- i. They had made supply to SEZ without payment of tax under LUT for the FY 2018-2019. Section 54 (1) of CGST Act, 2017 provides the time limit of two years from the relevant date within which refund can be filed by registered taxable person. However due to COVID pandemic, everyone faced several challenges in pursuing the requisite actions within the time frame given under various laws and thus the appellant was not able to submit its refund application within the time period mentioned under Section 54 (1). Moreover the appellant's head office is at Mumbai which was the most affected State and all paper work and administration work is done from their Head Office. Since Maharashtra was the last state after the end of first wave to get unlocked it was not possible at their end to provide their branch with required documents and data to file refund application. adjudicating authority has rejected the refund on the ground of time barred refund application.



- ii. Taking shelter of suo motu writ petition order of the Hon'ble Supreme Court dated 8-03-2021 the appellant had made the refund application on dated 23-3-2021 for the FY 2018-2019. Since the refund application time limit for the period April 2018 to Feb 2019 falls between 15-3-2020 to 14-3-2021, the refund application was eliibile for being accepted and processed. Further Hon'ble Supreme Court vide Order dated 27-4-2021, restored their earlier order dated 23-3-2020 granting relief in terms of excluding the Covid period for considering the period of limitation under various Laws in respect of all judicial or quasi judicial proceedings, whether condonable or not till further order.
- iii. Article 142 allows Hon'ble Supreme Court to pass such decree or make such order as is necessary for doing complete justice in any cause or matter. It must be noted that any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any Law made by Parliament. Article 141 prescribed that the Law declared by Hon'ble Supreme Court shall be binding on all Courts with the territory of India. Articles 141 and 142 read together therefore vest power in the Hon'ble Supreme Court inter alia fill the lacunae in existing laws, in the instore of justice which the legislature is not able to fill. Considering the exceptional circumstances which the people of the country are presently facing, the Hon'ble Supreme Court deemed it was appropriate exercise its plenary powers, under Article 141 and 142 and effectively pause the clock of limitation which ticks for every litigant, for the period starting from March 2015 2020 until further orders are passed, for the purpose of achieving complete justice. It is thus important that any interpretation of Order does not violate Article 14 Right to Equality. The principle underlying the guarantee of Article 14 Right to Equality, is that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between persons having substantially the same circumstances. Palpable arbitrariness in categorising the sector of beneficiary has been held as discriminating by Courts and violation of Article 14.
- iv. Referring to case law of Shri Bhudhan Choudhary Vs State of Bihar the appellant contended that refund application cannot be rationally distinguished from any other legal proceedings which have been awarded with the extensions in period of limitation.
- v. The latest order of Apex Court dated 27-4-2021 also falls in line with the above liberal interpretation. The Order was cautiously used the terms 'litigant-public' instead of litigant along. The order has explicitly provided its applicability on quasi judicial proceedings too. Further it has been clarified that order is applicable for any other laws, which prescribe period (s) of limitation for instituting proceedings, outer limits and termination of proceedings. In the light of Article 142 read with Article 14 and keeping in line the object sort to be achieved with the order all in unison, obstruction of refund application from the applicability of order appears to be discriminative interpretation shrinking the remedy to adhoc smaller group. Thus rejection of refund application on the ground of

absence of any directions from the Board/Ministry in respect of Hon'ble Supreme Court is not tenable.

- vi. In view of above submissions, the appellant requested to set aside the impugned order and to grant refund.
4. The appellant vide letter dated 28-5-2022 filed additional submission as under:
 - i. Referring to Hon'ble Supreme Court Order dated 23-3-2020, 8-3-2021, 27-4-2021, 23-9-2021 and 10-1-2022, they submitted that they had filed refund application on dated 23-3-2021 for the FY 2018-2019. For the FY 2018-2019 they had issued its first invoice for supply to SEZ by Invoice dated 10-4-2018 No.AHD 005483 and the same has been endorsed by the SEZ Officer on 10-4-2018 as an acknowledgement of goods being entered into the SEZ. So as per the Act, two years for claiming refund for the above-mentioned invoice ends on 10-4-2020.
 - ii. As per Hon'ble Supreme Court Orders when the time limit for claiming refund of I invoice falls within the limitation period, but obviously all other invoices during the years become eligible for this extended period. Since the refund applications were made on 23-3-2021, 13-4-2021 and 23-4-2021 all of them falls very well within the above extended limitation period, the refund application was eligible for being accepted and processed.
 - iii. The appellant relying upon Hon'ble Bombay High Court decision dated 10-1-2022 passed in the case of M/s.Saiher Supply Chain Consulting Pvt.Ltd Vs UOI ; Hon'ble Allahabad High Court Order dated 3-3-2022 in the case of M/s.Gamma Gaana Limited Vs UOI, Hon'ble Madras High Court decision in the case of M/s.GNC Infra LLP Vs Assistant Commissioner and Hon'ble Supreme Court decision in the case of M/s.Centaur Pharmaceuticals Vs La Renon Healthcare and Stanford Laboratories submitted that on the basis of Order dated 23-3-2020 of Hon'ble Supreme Court and extended from time to time looking into the realistic situation and hardship faced by the public at large, requested to set aside the impugned order rejecting refund and direct the proper officer to process the refund application.
 5. Personal hearing was held on dated 1-6-2022. Ms Pranali Thakore, authorized representative appeared on behalf of appellant on virtual mode. She stated that thy have no more submission other than written submissions made till date and requested to consider their written submission dated 28-5-2022.
 6. 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 initial claim was filed on dated 23-3-2021 and fresh claim after rectifying deficiencies was filed on 23-4-2021 in respect



of supply made to SEZ Unit/Developers without payment of tax for the period April 2018 to February 2019. As per Section 54 (1) of CGST Act, 2017 the time limit for filing refund claims is two years from relevant date specified under explanation 2 to Section 54 of CGST Act, 2017. As per Section 54 (3) in such cases the refund claim is to be filed at the end of tax period and as per Section 2 (106) of CGST Act, 2017 tax period is defined to mean the period for which a return is required to be furnished. Therefore, taking into account the due date for filing returns the two years time period falls not later than May 2020 to March 2021 for each month of claim. Therefore, it is apparent that refund claim filed on 23-4-2021 is beyond two years time limit prescribed under Section 54. Therefore, I do not find any infirmity in the impugned order passed by the adjudicating authority.

7. The appellant in their written submission has challenged the rejection of refund on time limitation ground referring to various Orders passed by the Hon'ble Supreme Court in Writ Petition No.3 of 2020 taking suo motu cognizance of the difficulties faced in filing petitions/suits/application/appeals/all other quasi proceedings due to outbreak of Covid 19 pandemic. In this regard, for better appreciation of facts, I refer to Orders passed by Hon'ble Supreme Court granting exclusion and extension of time limit due to COVID outbreak chronologically as under:

- i. Hon'ble Supreme Court in suo motu writ petition (Civil) No.3/2020 vide Order dated 23-3-2020 ordered that period of limitation in filing petitions/applications/suits/ appeals/all other proceedings, irrespective of limitation prescribed under General Law or Special Laws, whether condonable or not shall stand extended with effect from 15-3-2020 till further orders to be passed by the Court in present proceedings.
- ii. Hon'ble Supreme Court vide Order dated 8-3-2021 ordered that in computing the period of limitation for any suit, appeal, application or proceeding the period from 15-3-2020 till 14-3-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2020, if any, shall become available with effect from 15-3-2021.
- iii. Hon'ble Supreme Court in Misc. Application NO.665/2021 in SMW (C) No.3/2020 dated 27-4-2021 has restored Order dated 23-3-2020 and in continuation of Order dated 8-3-2021 directed that the period of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings whether condonable or not, shall stand extended till further orders. in pursuance to Order dated 27-4-2021 CBIC vide Circular No.157/13/2021-GST dated 20-7-2021 has also clarified that *appeals by tax payers/tax authorities against any quasi judicial order, whether any appeal is required to be filed before Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various Courts against any quasi judicial order or where a proceedings for revision or rectification of any order is required to be undertaken, the time limit for the same would stand extended as per the Hon'ble Supreme Court's Order. In other words, the extension of timelines granted by Hon'ble*

Supreme Court vide its Order dated 27-4-2021 is applicable in respect of any appeal which is required to be filed before Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various Courts against any quasi judicial order or where proceedings for revision or rectification of any order is required to be undertaken and is not applicable to any other proceedings under GST Laws.

- iv. Hon'ble Supreme Court vide Order dated 23-9-2021 ordered that for computing the period of limitation for any suit, appeal, application or proceedings the period from 15-3-2020 till 2-10-2021 shall stand excluded and consequently balance period of limitation remaining as on 15-3-2020 if any, shall become available with effect from 3-10-2021 and that in cases where the limitation would have expired during the period from 15-3-2020 till 2-10-2021 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 3-10-2021.
- v. Hon'ble Supreme Court vide Order dated 10-1-2022 ordered that for computing the period of limitation for any suit, appeal, application or proceedings the period from 15-3-2020 till 28-2-2022 shall stand excluded and consequently balance period of limitation remaining as on 15-3-2020 if any, shall become available with effect from 1-3-2022 and that in cases where the limitation would have expired during the period from 15-3-2020 till 28-2-2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022.

8. I find that as per CBIC Circular dated 20-7-2021, the extension granted by Hon'ble Supreme Court from 15-3-2020 till further orders is applicable only for time limit in filing of appeals before appellant authorities/Tribunals/Courts and not applicable to any other proceedings under GST Laws, which imply that extension granted by Hon'ble Supreme Court is also not applicable to time limit for filing refund application under CGST Act, 2017. In this regard I refer to case laws relied by the appellant in their additional submission dated 28-5-2022 seeking benefit of Hon'ble Supreme Court Order.

9. I find that in the case of M/s.Saiher Supply Chain Company Vs UOI (WP (L) No.1275/2021), Hon'ble High Court of Bombay held as under :

13. The Hon'ble Supreme Court by Order dated 23rd September 2021 in Misc. Application No. 665 of 2021 issued further directions that in computing the period of limitation in any Suit, Appeal, Application and or proceedings, the period from 15th March 2020 till 2nd October 2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15th March 2021, if any shall become available with effect from 3rd October 2021. In view of the said Order dated 23rd March 2020 and the judgment dated 23rd September 2021 passed by the Hon'ble Supreme Court, the period of limitation falling between 15th March 2020 and 2nd October 2021 stood excluded. In our view also, the period of limitation prescribed in the said Circular under

Section 54(1) also stood excluded. 14. In our view, the Respondent No.2 is also bound by the said Order

dated 23rd March 2020 and the Order dated 23rd September 2021 and is require to exclude the period of limitation falling during the said period. Since the period of limitation for filing the third refund application fell between the said period 15th March 2020 and 2nd October 2021, the said period stood excluded. The third refund application filed by the Petitioner thus was within the period of limitation prescribed under the said Circular dated 18th November 2019 read with Section 54(1) of the Central Goods and Services Act, 2017. In our view, the impugned Order passed by the Respondent No.2 is contrary to the Order passed by the Hon'ble Supreme Court and thus deserves to be quashed and set-aside.

10. Similarly, in the case of M/s.GNC Infra LLP Vs Assistant Commissioner, Hon'ble High Court of Madras vide Order dated 28-9-2021 has granted the benefit of suo-motu order of Hon'ble Supreme Court dated 27.04.2021 made in Miscellaneous Application No.665/2021 in SMW(c) No.3/2020, to refund claim filed on 19-4-2021 for the claim period June 2018 and August 2018 and accordingly set aside the impugned orders that the refund applications are filed beyond two years from relevant date.

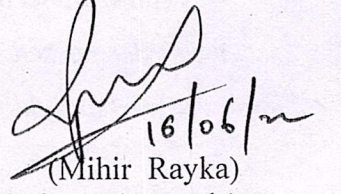
11. In the case of Gamma Gaana Ltd Vs UOI & Others, vide Order dated 3-3-2022, Hon'ble Allahabad High Court referring to Hon'ble Supreme Court Order dated 10-1-2022 also held that *on the facts of the present case, we find that the refund application of the petitioner could not have been rejected by the respondent NO.4 merely on the ground of delay, ignoring the afore quoted order of Hon'ble Supreme Court.*

12. The above judicial decisions extend the benefit of Hon'ble Supreme Court's Order dated 23-9-2021 and 10-1-2022 excluding the time period from 15-3-2020 till 28-2-2022 and providing 90 days extension period from 1-3-2020 for filing refund claims under Section 54 also. Consequently, in respect of refund claims for which due date for filing refund claim falls during the period from 15-3-2020 to 28-2-2022, two years time limit under Section 54 of CGST Act, 2017 is to be reckoned, excluding the said period and within 90 days from 1-3-2022. In the subject case, taking into account the claim period, the due date for filing of refund claim under Section 54 falls not late than the month of May 2020 to March 2021, which is within the exclusion period granted by the Hon'ble Supreme Court. I also note that CBIC vide Circular No.1006/13/2015-CX dated 21-9-2015 has also clarified that Board Circulars contrary to the judgements of Hon'ble Supreme Court/High Court become non-est in Law and should not be followed unless appeal has filed against the High Court's Order. On visiting the official website of Hon'ble Supreme Court neither any appeal/application filed by the Department against the Orders passed by Hon'ble High Court or any stay order issued against operation of Hon'ble High Court is available. Accordingly, following the Orders passed by Hon'ble High Court, I hold that the present claim filed by the appellant on dated 23-4-2021 is not hit by time limitation prescribed under Section 54 of CGST Act, 2017. Hence, I find force in the submission made by the appellant and the appeal filed by the appellant succeeds on time limitation ground. Needless to say, since

the claim was rejected on time limitation of ground 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 CGST Act, 2017 and Rules made thereunder. Accordingly, I set aside the impugned order and allow this appeal.

अपील कर्थाद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है |

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


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested



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



By RPAD

To,

M/s.Numex Chemical Corporation,
Ground Floor, Shop NO.4,
Medicine Market Paldi,
Ahmedabad 380 006

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 Deputy Commissioner, CGST, Division VII (Satellite), Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

