



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- 20220664SW000000858E

रजिस्टर्ड डाक ए.डी. द्वारा

क

फाइल संख्या : File No : GAPPL/ADC/GSTP/2064/2021-APPEAL

/ 2044 70 2049

ख

अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-56/2022-23**

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)

ग

Arising out of Order-in-Original No. **ZR2405210438451 DT. 25.05.2021**

issued by Assistnat Commissioner, CGST, Division-III, Vatva II, Ahmedabad South

घ

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

**Shri Vijaybhai Amrutbhai Patel of M/s. Corrocare Industries,
4718, Phase IV, GIDC, Vatva, Ahmedabad-382445**

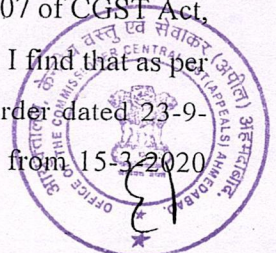
(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed 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

Shri Vijaybhai Amrutbhai Patel of M/s. Corrocare Industries, 4718, Phase IV, GIDC, Vatva, Ahmedabad 382 445 (hereinafter referred to as the appellant) has filed the present appeal on dated 6-9-2021 against Order No. ZR2405210438451 dated 25-5-2021 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, CGST, Division III, Vavta II, Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24ACLPP0048E1ZV has filed refund claim on dated 23-4-2021 for refund of Rs.64,929/- on account of supply of goods made to SEZ Unit/Developer with payment of tax for the period September 2018 to March 2019. The appellant was issued show cause notice No. ZQ2405210182028 dated 13-5-2021 for rejection of claim on the ground of delay in refund application and claim is time barred as per Section 54 of CGST Act, 2017. The appellant filed reply to the show cause notice relying on Hon'ble Supreme Court's Order dated 8-3-2021. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant on the ground of delay in refund application and that the reply to show cause notice is not acceptable as no instruction has been issued by CBIC in respect of Supreme Court Order dated 8-3-2021.
3. Being aggrieved the appellant filed the present appeal on the ground that as per Hon'ble Supreme Court Order dated 27-4-2021 and CBIC Circular NO.157/13/2021-GST dated 20-7-2021 the time limit has been extended to 15-6-2021 ie 90 days from 15-3-2021 and hence their application for SEZ refund is well within the time limit as extended by Hon'ble Supreme Court Order. The appellant further contended that the adjudicating authority has erred in not following the judgment of Hon'ble Supreme Court on limitation when the order is clear and speaking. In view of above the appellant requested to quash and set aside the impugned order and restore their refund application. The appellant has also attached letter dated 2-9-2021 for condonation of delay in filing of appeal referring to various case laws.
4. Personal hearing was held on dated 2-6-2022. Shri Prinyam Shah, authorized representative appeared on behalf of the appellant on virtual mode. He stated that they have nothing more to add to their written submission till date.
5. I have carefully gone through the fact of the case, grounds of appeal, submission made by the appellant and documents available on record. At the outset I find that the impugned order was communicated to the appellant on dated 25-5-2021 and the present appeal was filed on dated 6-9-2021 ie after a period of 90 days from the date of communication of Order. Therefore, the appeal filed by the appellant is beyond the time limit prescribed under Section 107 of CGST Act, 2017. The appellant has also filed a request to condone delay in filing of appeal. I find that as per Hon'ble Supreme Court's Order dated 23-3-2020; Order dated 27-4-2021, Order dated 23-9-2021 and Order dated 10-1-2022, extending the time limit for filing of appeal from 15-3-2020



till further orders and excluding the period from 15-3-2020 till 28-2-2022 for the purpose of limitation in respect of all judicial or quasi judicial proceedings. I hold that the present appeal is not hit by time limitation factor.

6. I find that in this case refund claim was rejected solely on time limitation ground. I find that the refund claim filed on 23-4-2021 for refund of tax paid on supply made to SEZ Unit/Developers for the period September 2018 to March 2019, is beyond two years from the relevant date prescribed under explanation (2) to Section 54 of CGST Act, 2017 and hence beyond time limit prescribed under Section 54 (1) of CGST Act, 2017. In their reply to show cause notice the appellant relied upon Order dated 8-3-2021 of Hon'ble Supreme Court in suo motu writ petition (Civil NO.3), wherein time limit which falls under 15-3-2020 to 14-3-2021 was excluded and all the persons have a limitation period of 90 days from 15-3-2021. However, the adjudicating authority held that the order of Hon'ble Supreme Court has not recognised by the CBIC Board. In their grounds of appeal also the appellant relied upon Hon'ble Supreme Court's Order dated 27-4-2021 and CBIC Circular NO.157/13/2021-GST dated 20-7-2021. In this regard, I refer to Orders passed by Hon'ble Supreme Court granting exclusion and extension of time limit due to COVID outbreak as under:

7. Due to COVID outbreak in the Country, 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. Subsequently, due to improvement in COVID situation, 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. Thereafter due to re-surge of Covid Cases, 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.

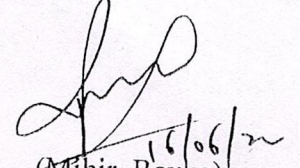
8. In view of above, I find that on the basis of Hon'ble Supreme Court's Order dated 27-4-2021 issued in continuation of Order 8-3-2021 CBIC vide Circular dated 20-7-2021 has also issued further clarification on the Order of Hon'ble Supreme Court. Therefore, reason given in the impugned order that no instruction has been issued by CBIC in respect of Hon'ble Supreme Court Order dated 8-3-2021 is factually wrong and incorrect. As per clarification issued by the CBIC, 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. I further find that subsequently 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. Thereafter vide Order dated 10-1-2022, the exclusion period was extended to 15-3-2020 till 28-2-2022 and 90 days extension was provided from 1-3-2022.

9. In this regard, I find that Hon'ble Bombay High Court in the case of M/s. Saiher Supply Chain Company Vs UOI (WP (L) No.1275/2021) in its judgment dated 12-1-2022, has extended the benefit of Hon'ble Supreme Court Order dated 23-9-2021 for determining time limit under Section 54 (1) of CGST Act, 2017 for refund claims also. Similar view has also taken by Hon'ble Allahabad High Court in the case of M/s. Gamma Ganna Ltd.. 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 October 2020 to April 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, 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 |

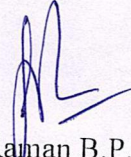
10. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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



By RPAD

To,

Shri Vijaybhai Amrutbhai Patel
of M/s. Corrocare Industries,
4718, Phase IV, GIDC,
Vatva, Ahmedabad 382 445

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 III (Vatva II) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

