



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1263/2021 -APPEAL / 1781 to 1786

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-59/2022-23**
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. **ZO2404210162672 DT. 13.04.2021**
issued by Assistant Commissioner, CGST, Division-I (Rakhial), Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**M/s. Jay Jalaram Saw Mill, Jasodanagar Highway Char Rasta,
Maninagar East, Ahmedabad-380022**

(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

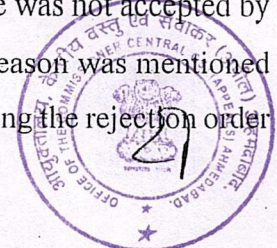
M/s.Jay Jalaram Saw Mill, Jasodanagar Highway Char Rasta, Maninagar East, Ahmedabad 380 022 (hereinafter referred to as the appellant) has filed the present appeal on dated 7-7-2021 against Order No.ZO2404210162672 dated 13-4-2021 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, CGST, Division I (Rakhial), Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAAFJ6884F1ZB has filed refund claim for Rs.11,00,000/- for refund on account of ITC accumulated due to inverted tax structure. The appellant was issued show cause notice ref No.ZT2403210333737 dated 23-3-2021 for rejection of refund due to delay in refund application and that the claim appears to be time barred under Section 54 read with Notification NO.2/2019 dated 29-1-2019. The appellant filed reply to the show cause notice under reference number ZY2403210333737 dated 8-4-2021. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant due to delay in refund application and that the submission in response to the SCN is incomplete and not acceptable.

3. Being aggrieved the appellant filed the present appeal on following grounds:
When any provision of any Act or Rules desires to force it retrospectively the legislature specifically enumerated into amended Act or Rules about its intention to so retrospectively. In the present case since the time limit clause Section 54 has been amended and comes into force with effect from 1-2-2019, the same is applicable after the date of amendment and it cannot apply for the period beyond the amended date. Reply on the judgment in the case of M/s.Shree Ram Electric Co rendered by Hon'ble Joint Commissioner (Appeals) wherein he has directed the assessing authority to process the appeal and the rejection order is set aside. This judgement is squarely applies to this case. The adjudicating authority was informed of this online reply but the adjudicating authority has deliberately insulted the verdict of Hon'ble Joint Commissioner (Appeal) and also not considered the fact of Law as to why he has not accepted the judgement or the facts of the Law has not been mentioned in the refund rejection order. It is a non speaking order and liable to be set aside.

4. Personal hearing was held on dated 9-6-2022. Shri Mehul N Shah, authorized representative appeared on behalf of the appellant on virtual mode. He has asked for three working days for additional submission which is duly granted.

5. Accordingly, the appellant vide letter dated 10-6-2022 filed further submission as under :
They had filed reply to the show cause notice on dated 8-4-2021 but the same was not accepted by the adjudicating authority and refund rejection order was passed where no reason was mentioned as to why their contention and judgement are not acceptable and thereby making the rejection order a non-speaking one.



In the show cause notice it was mentioned that there is delay in filing refund application as claim is time barred under Section 54 read with Notification No.2/2019 dated 29-1-2019. Section 54 does not stop any person from applying for refund within stipulated time. The period mentioned is two years from the end of the period in question. But the Notification NO.2/2019 dated 29-1-2019 stated that the relevant period means two years from the filing of return.

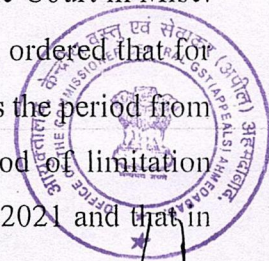
Reiterating the submissions made in grounds of appeal, the appellant submitted that in the light of aforesaid facts and evidences they are surely eligible for refund amount as per the application done online. Accordingly, they requested to set aside the rejection order.

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 claim filed on dated 18-3-2021 for the claim period April 2018 to March 2019 for refund of ITC accumulated due to inverted tax structure was rejected due to time limitation ground. The time limit for filing refund of ITC accumulated due to inverted tax structure is governed under clause (e) of Explanation II to Section 54 of CGST Act, 2017. The clause (e) of Explanation was amended vide Central Goods and Service Tax Amendment Act 2018 with effect from 1-12-2019 vide Notification No.2/2019- dated 29-1-2019, which defines the relevant date for filling application for refund of unutilized input tax credit as under :

"(e) in the case of refund of unutilized 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. "

7. In the subject case the claim was made for the period April 2018 to March 2019 on 18-3-2021 and hence as on date of filing of claim, the time limit for filing refund claim under Section 54 two years from the due date for furnishing of return under Section 39 which in the subject case is 20th day of succeeding month. Accordingly, the time limit for filing refund claim falls on or before 19th day of May 2020, 19TH June 2020, 19th July 2020 so on. Therefore, only the claim for the period March 2019 for which due date falls on or before 19th April 2021, is within the time limit and claim for remaining period is hit by time limitation. The appellant in their written submission has relied upon decision of Joint Commissioner (Appeals) in the case of Shree Ram Electric Co. I have gone through the said case and find that in this case relevant date is reckoned as per pre amended clause (e) of explanation 2 to Section 54 wherein relevant date was prescribed as the end of Financial Year. Since the above Order was passed by an appellate authority of the same competency of this authority and not by a higher appellate authority I do not rely on the decision rendered in the said case to this case.

8. However, I find that in the wake of Covid 19 pandemic, Hon'ble Supreme Court in Misc. Application No.665/2021 in SMW (C) No.3/2020 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

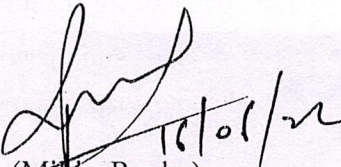


cases where the limitation would have expired during the period from 15-3-2020 till 2-10-2021 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 3-10-2021. Thereafter vide Order dated 10-1-2022, the exclusion period was extended to 15-3-2020 till 28-2-2022 and 90 days extension was provided from 1-3-2022.

9. In pursuance to above Order, 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 due date for filing returns, the due date for filing of refund claim under Section 54 falls not later than 20th May 2020 till 20th 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 either 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 18-3-2021 is not hit by time limitation prescribed under Section 54 of CGST Act, 2017. 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, I order that 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 |

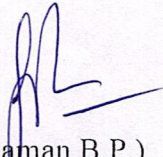
10. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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



By RPAD,

To,

M/s. Jay Jalaram Saw Mill,
Jasodanagar Highway Char Rasta,
Maninagar East, Ahmedabad-380022

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 Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 5) The Asst./Deputy Commissioner, CGST, Division-I(Rakhial), Ahmedabad South
- ✓ 6) Guard File
- 7) PA file

