



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- 20220764SW0000222EA6

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1428/2021 -APPEAL / 2568 - 7573

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC- 78/2022-23

दिनांक Date : 11-07-2022 जारी करने की तारीख Date of Issue : 12-07-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. ZR2406210077229 DT. 07.06.2021
issued by Deputy Commissioner, CGST, Division VII(Satellite), Ahmedabad South

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

M/s. Synoptek India Private Limited, I Floor, B Block,
Mondeal Heights, SG Road, Ahmedabad-380015

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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 .



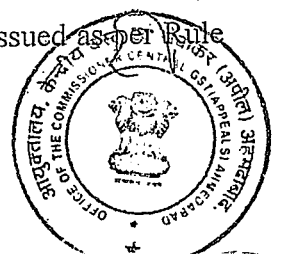
ORDER IN APPEAL

M/s.Synoptek India Private Limited, I Floor, B Block, Mondeal Heights, SG Road, Ahmedabad 380 015 (hereinafter referred to as the appellant) has filed the present appeal online on dated 20-7-2021 against Order No.ZR2406210077229 dated 7-6-2021 (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 24AAACI6432R1Z9 has filed refund claim on dated 13-4-2021 for refund of Rs.1,31,20,224/- on account of ITC on export of goods and service without payment of tax for the period April 2019 to March 2020. The appellant was issued deficiency memo in Form GST RFD 03 under reference No.ZY2404210161683 dated 13-4-2021 on the reason 'Others'. The appellant filed revised refund application on dated 29-4-2021. The appellant was issued show cause notice in Form GST RFD 08 under reference No.ZV2405210282917 dated 18-5-2021 for rejection of refund of Rs.64,90,224/- on the reason of delay in refund application and that refund is time barred in respect of FIRC dated 5-4-2019, 3-4-2019, 8-4-2019 and 16-4-2019 and that there is mismatch in adjusted total turnover and zero rated turnover as per Statement 3A and GSTR3B. The adjudicating authority vide impugned order held that entire claim of Rs.1,31,20,224/- is inadmissible on the ground of delay in refund application and that the appellant has not submitted reply in Form GST RFD 09.

3. Being aggrieved the appellant filed the present appeal, on the following grounds, wherein they interalia submitted that;

- i. That they were deprived of an opportunity of personal hearing. It is settled law that the proceedings conducted by the adjudicating authority are quasi judicial in nature which proceedings have civil consequences. The adjudicating authority has proceeded to pass the impugned order ex-parte without granting the appellant any opportunity of heard. Such an approach is inconsistent with the principles of natural justice and renders the impugned order void ab initio.
- ii. The proviso to Rule 92 (3) makes it abundantly clear that no application for refund shall be rejected without giving the applicant an opportunity of being heard.
- iii. The impugned order blatantly transgresses the principles of natural justice and further distorts the statutory mandate prescribed by the proviso to Rule 92 (3) of CGST Rules, 2017. Consequently, the impugned order is ex-facie illegal and cannot be allowed to sustain.
- iv. The show cause notice is vague and does not clearly define the allegations. The show cause notice is the foundation of an adjudication proceedings and must give full details regarding the allegations involved and the outcome of adjudication must also confirm to the proposals set out in the notice to show cause notice.
- v. The original claim was initially filed within time. Deficiency memo issued to them on 13-4-2021 on the first instance after filing the original claim does not contain any description or particulars about discrepancy. However, because deficiency memo was issued as per Rule



90 (3) of CGST Rules, 2017, the appellant was forced to file fresh claim on a later date after the relevant date had partially expired. Certain documentary requirements were communicated to them orally by the Inspector and the appellant duly complied by furnishing the same, even though no notice was officially issued to them.

- vi. The SCN cryptically proposed to deny the refund basis an alleged delay in filing the fresh claim and contended that refund claim in respect of certain FIRC was time barred. The SCN did not as much as specify the manner of ascertaining the limitation period or specify any reason for suggesting that a portion of the refund claim is time barred. The SCN therefore failed to appropriately articulate the proposed reasons for refund rejection.
- vii. The SCN propose to reject an amount to the extent of Rs.64,90,224/- the computational basis in deriving such amount was however unspecified.
- viii. The SCN further remarked that there is mismatch between the disclosures made vide Form GSTR1 and GSTR3B. However, no quantification of such mismatch or the bearing of such mismatch qua entitlement to refund had been specified in the SCN.
- ix. Thus, the SCN ought to be termed as vague and one that has deprived the appellant an opportunity to mount an effective defence. The action of the adjudicating authority in proceeding to reject the refund sought by them basis the issuance of a vague and cryptic notice to show cause are patently violating of principles of natural justice are thereby legally unsustainable.
- x. Since the SCN did not determinatively convey any case of refund rejection, it follows that the SCN and the consequent proceedings invite invalidation in light of principles of natural justice. Further verbal discussion with the Inspector who is not even authorized to pass the impugned order were only for few minutes. Such conversations cannot be construed to be a hearing within the meaning of proviso to Rule 92 (3). There is no record of what transpired between the concerned officer and their staff.
- xi. The impugned order is non speaking. The impugned order without adducing an iota of evidence or reason has rejected the entire refund claim by cryptically concluding that the fresh claim preferred by them has been filed belatedly. No reference has been made to the facts as to how, when and where there has been non compliance or violation of provisions of Law. Therefore, the entire basis of refund rejection is cryptic and unsupported by any concrete findings. Furthermore, the failure to mention the statutory provisions that have been invoked to reject the fresh claim filed by them renders the impugned order vague and sketchy.
- xii. It is a well settled legal position that fair hearing, transparency and a reasoned decision are some of the essential criteria of the principles of natural justice. However, the impugned order does not exhibit the attributes of a speaking order. The failure to render findings justifying the rejection of refund renders the impugned order liable to be set aside for having impinged the principles of natural justice.

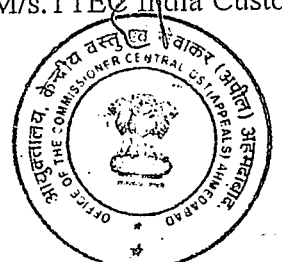
The adjudicating authority has failed to follow the due process of Law.

The appellant was deprived of an opportunity of personal hearing. The action of the adjudicating authority was inconsistent with settled principles of natural justice in so far as



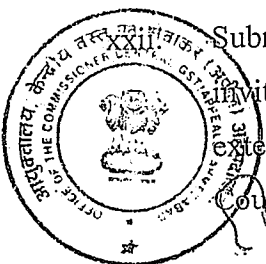
the appellant was not granted any opportunity of a personal hearing. The requirement of personal hearing is specifically legislated for under proviso to Rule 92 (3) of CGST Rules, 2017. Hon'ble Bombay High Court has categorically upheld the requirement of a personal hearing in context of refund claims in BA Continuum (WP (L) NO.3264 of 2020. Hon'ble Allahabad High Court has in context on the GST regime held that where an adverse decision is contemplated, the affected party need not even request for a hearing. It is mandatory for the authority concerned to afford an opportunity of hearing. The appellant relied upon decision in the case of M/s.Bharat Mint and Allied Chemicals Vs Commissioner Commercial Tax and Others reported in 2022-TIOL-229-HC-All-Gst.

- xv. The show cause notice is vague and cryptic. Hon'ble High Court of Gujarat considered the legal validity of refund rejection orders that were predicated on a vague SCN and decided to set aside the refund rejection orders that were the subject matter of challenge in the case of M/s.Arcellor Mittal Nippon Steel India Ltd Vs Assistant Commissioner.
- xvi. The impugned order is non speaking. Does not specify, when where and how there has been a violation of the statutory provision. The principles of natural justice mandate the articulation of reasons and findings in the course of adjudicating proceedings. The impugned order without adducing an iota of evidence or reason has rejected the entire claim preferred by them by cryptically concluding that the 'fresh claim' has been filed belatedly. No reference has been made to the facts as-to how, when and where there has been non compliance or violation of the provisions of Law. Therefore, the entire basis of refund rejection is cryptic and unsupported by any concrete findings. Furthermore, the failure to mention the statutory provisions that have been invoked to reject the 'fresh claim' filed by them renders the impugned order vague and sketchy.
- xvii. The adjudicating authority failed to follow the due process of Law. In terms of statutory mandate under Section 54 (6) of CGST Act, 2017 and Rule 91 of CGST Rules, 2017 the adjudicating authority was statutorily bound to disburse 90% of provisional refund within seven days of issuance of acknowledgement. The action of the adjudicating authority is in breach of Circular NO.131/1/202-GST dated 23-1-2020 directing clearance of refund claims in seven days and Circular NO.125/44/2019-GST dated 19-11-2019 directing release of provisions refund 90% even in case of irregularity. The Circulars issued by the Board are binding on the adjudicating authority.
- xviii. The impugned order traverses the scope of show cause notice. The show cause notice proposed to reject an amount of Rs.64,90,224/-. However, impugned order has rejected the entire amount of Rs.1,31,20,224/- including the undisputed amount of Rs.66,30,000/-. It is settled Law that the impugned order cannot travel beyond the scope of SCN. The Hon'ble High Court has reaffirmed the settled convention that an adjudication order cannot travel beyond the scope of the show cause notice. While dealing with an adjudication order that rejected an amount that was higher than the proposed rejection amount in the show cause notice, the Hon'ble High Court held that the concerned authority has committed a gross and apparent mistake. The appellant relied upon decisions in the case of Toyo Engineering India Ltd ; Navneet R Jhanwar Vs State Tax Officers and others and M/s.TTEC India Customer Solutions Pvt.ltd Vs DC of Sales tax.



- xix. The impugned order is oblivious to statutory time limit. The time limit for completion of any action including filing of reply that was due between 15-4-2021 and 29-6-2021 was specifically extended till 30-6-2021 by Notification No.14/2021-CT dated 15-2-2021 amended by Notification No.24/2021-CT dated 1-6-2021. The appellant was therefore statutorily permitted to furnish reply to SCN on or before 30-6-2021. The adjudicating authority has however ignored the effect of extension notifications as well as the extension letter dated 24-5-2021 filed by the appellant and passed the impugned order in a premature manner exhibiting undue hurry.
- xx. All conditions relevant for claiming refund as cohesively prescribed under Section 54 of CGST Act, 2017 read with Section 16 and 2 (6) of IGST Act have been duly fulfilled. The fresh claim was also within the statutory time limit. Rule 90 (3) of CGST Rules, 2017 was amended by way of Notification No.15/2021-CT dated 18-5-2021 and a proviso inserted. The newly inserted proviso stipulated that time period from the date of filing of refund claim till the communication of deficiencies shall be excluded from the period of limitation under Section 54 (1) in respect of any fresh refund claims filed after rectification of the deficiencies. The proviso came into effect on 18-5-2021 coinciding with the date of SCN and predating the impugned order. In any event the proviso merely is curating and clarificatory and must apply retrospectively. It is pertinent to note that the time limits for completion of any action including filing of applications due between 15-4-2021 and 29-6-2021 was specifically extended till 30-6-2021 by Notification No.14/2021-CT dated 1-5-2021 amended by Notification No.24/2021 CT dated 1-6-2021. On cumulative reading of the foregoing, it follows that the fresh refund claim was filed squarely within the statutory timelines in the light of proviso inserted under Rule 90 (3) of the CGST Rules read in conjunction with the extension Notifications cited in supra. Basis proviso read with extension Notifications fresh claim is within statutory time limit. The adjudicating authority assumed jurisdiction on statutory misinterpretation and therefore, the SCN and impugned order are legally unfounded. As per settled Law the time limit for filing refund application is determinable from the date of original claim and not from the date of fresh claim after deficiencies are rectified. The appellant relied upon decision in the case of Linde Engineering in SCA No.12626 of 2018 Guj HC ; M/s.Arya Exports (2005 (192) ELT 89 (Del) and IOC Ltd (2007 (220) ELT 609 (GOI).
- xxi. The impugned order passed in hasty and pre-mediated manner. The impugned order was passed in undue hurry with the premediated objective of rejecting the appellant's refund claim. No opportunity was given to bring factual and legal submissions on record. The concluding lines of impugned order do not specify provision of quantify claim amount, thereby reflecting the haste in issuing the impugned order. The appellant relied upon the decision in the case of M/s.BSCPL Infrastructure Ltd (2013 63 VST 1 (Guj) and M/s.DBOI Global Service P.ltd (2013 (29) STR 117 (Bom).

Submissions concerning of the suo motu orders of the Hon'ble Supreme Court. The appellant invites attention to the Order of Hon'ble Supreme Court on 23-3-2020 in Re-Cognizance for extension of limitation in Sua Motu Writ Petition (Civil) NO.3 of 2020. Hon'ble Supreme Court vide Order dated 23-9-2021 in Misc Application No.665 of 2021 issued further

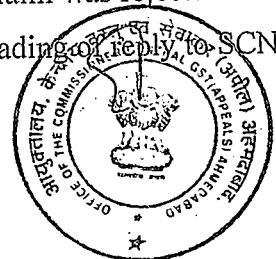


directions that in computing the period of limitation in any Suit, Appeal, Application and or proceedings, the period from 15-3-2020 till 2-10-2021 shall stand excluded. Subsequently, Hon'ble Supreme Court issued Order dated 10-1-2022 and restored their earlier order dated 23-3-2020 and framed the direction while exercising powers under Article 141 and 142 of the Constitution. Therefore, the orders of Hon'ble Supreme Court explicitly mandate that the outer limit prescribed under various Laws is to be computed by excluding the period from 15-3-2020 till 28-2-2022. On a cohesive reading it is also discernible that the directive of the Hon'ble Supreme Court applies equally to refund applications that are furnished under GST Laws. Consequently, the basis for refund rejection viz that the refund has been filed belatedly, is rendered entirely redundant in the light of the suo motu directions framed by the Hon'ble Supreme Court. The issue that the suo motu directives of the Hon'ble Supreme Court apply equally to the time limit for refund applications under the GST regime is no longer re integra. Various High Court's have unanimously held that the extension directed by the Hon'ble Supreme Court squarely covers refund applications under Section 54 of the CGST Act. The appellant relied upon decision in the case of M/s.Saiher Supply Chain Consulting Pvt.Ltd Vs UOI and Others (2022 (1) TMI 494-Bom HC ; M/s.GNC Infra LLP Vs Assistant Commissioner (Circle) 2021 (11) TMI 973 ; M/s.Vyplavi Granites Vs Deputy Commissioner of Central Tax and Others (2022 (4) TMI 1345-AP HC ; M/s.Rafflesia Trading Private Ltd Vs Assistant Commissioner of State Goods and Service Tax ; Ballygunge Charge & Ors (TS 53 HC (Cal) 2022 GST) and Imran Javed Vs Assistant Commissioner, State Tax Ballygunge Charge and Others WPA No.950 of 2022.

xxiii. In view of above submissions, the appellant submitted that they are entitled to refund claim of unutilized ITC to the tune of Rs.1,31,20,224/- arising on account of zero rated supplies and the impugned order deserves to be quashed forthwith and the refund claim be sanctioned without demur along with applicable interest.

4. Personal hearing was held on dated 31-5-2022. Shri Pratyushprava Saha, Shri Mahir Chablani and Ms.Kanika Sharma, authorized representatives appeared on behalf of the appellant on virtual mode. They stated that appeal No.1428/2021 is withdrawn from the Hon'ble High Court for decision at this office and appeal No.1846/2021 is subjudice in Hon'ble Gujarat High Court. He wants to submit additional submission for which three working days are granted. Accordingly, the appellant filed additional submission on dated 2-6-2022 wherein they reiterated the submission made in the grounds of appeal. Regarding withdrawal of appeal from Hon'ble Gujarat High Court, the appellant submitted copy of Order dated 15-7-2021 passed by Hon'ble High Court of Gujarat in R/SCA No.9922 of 2021 wherein Hon'ble High Court has granted permission to withdraw the petition with a view of avail alternative remedy that may be available under the Act and accordingly dismissed the petition as withdrawn. They had also submitted copy of four FIRCs which are in dispute.

5. I have carefully gone through the facts of the case, ground of appeal, submission made by the appellant and documents available on record. In this case the refund claim was rejected on the ground of delay in filing refund application and on the ground of non-uploading of reply to SCN in



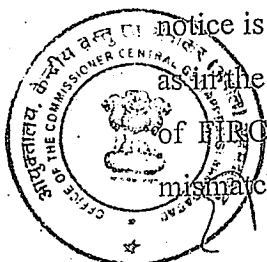
Form GST Form 09. Before proceeding further, I refer to relevant provisions governing rejection under Rule 92 (3) of CGST Rules, 2017 as under:

Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

6. As per provisions of sub rule (3) of Rule 92 of CGST Rules, it is statutory requirement to issue show cause notice; consider the reply filed by the claimant; provide opportunity of personal hearing and record the reasons in writing for rejection of refund claim. I find that in this case show cause notice was issued to the appellant in Form GSTR RFD 08 for rejection of part of claim amount on the ground of time limitation ground wherein it was mentioned that claim filed in respect of FIRC dated 5-4-2019, 3-4-2019, 8-4-2019 and 16-4-2019 are time barred and that there is mismatch in adjusted total turnover and zero rated turnover as per Statement 3A and GSTR3B. The appellant was also directed to file reply to the show cause notice within fifteen days ie on or before 31-5-2021 in terms of Rule 92 (3) of CGST Rules, 2017. From the documents available on record, I find that the appellant vide letter dated 24-5-2021 has requested to provide extension of further period of sixty days for submitting reply due to Covid 19 situation. I further find that as per Notification No.14/2021-CT dated 1-5-2021 and Notification No.24/2021-CT dated 1-6-2021, the time limit for completion or compliance of any action, including filing of reply, for which due date falls during the period from 15-4-2021 to 29-6-2021 was extended till 30-6-2021. In this case, the time limit for filing reply falls during the above period and hence the appellant is entitled for further extension till 30-6-2021 for filing reply and the adjudicating authority is duty bound to give extension till 30-6-2021. However, the adjudicating authority ignoring the extension of time granted vide above Notifications has not provided any further extension sought for by the appellant and passed the impugned order on 7-6-2021 hastily and prematurely without waiting of reply and without considering the reply to the show cause notice. Consequently, I find rejection of refund ordered without following the statutory provisions is not legally sustainable and tenable.

7. In their grounds of appeal, the appellant has made submission contending that show cause notice is vague and cryptic. I find this submission is factually not correct and not proper inasmuch as in the show cause notice it was mentioned in clear and unambiguous terms that claim in respect of FIRC dated 5-4-2019, 3-4-2019, 8-4-2019 and 16-4-2019 are time barred and that there is mismatch in adjusted total turnover and zero rated turnover as per Statement 3A and GSTR3B.

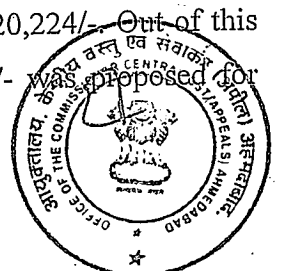


Apparently, the above charges are alleged in the show cause notice on the basis of documents submitted by the appellant along with refund claim. Therefore, even if the relevant date and due date is not mentioned and quantification of mis match is not made, since the charges are very clear, it does not vitiate the show cause notice and hence I find that the submission made in this regard lack merit.

8. Regarding non grant of personal hearing, I find that as per proviso to Rule 92 (3) of CGST Rules, 2017 it is a statutory requirement to grant opportunity of personal hearing before rejection of refund claim. Even otherwise, opportunity of personal hearing is one of the principles of natural justice and it is very settled principle of Law that no adverse order should be passed in judicial/quasi judicial proceedings without providing opportunity of being heard. In the subject case personal hearing was fixed on dated 25-5-2021 and impugned order was passed on 7-6-2021. It is not forthcoming from the impugned order as to whether personal hearing was held on 25-5-2021 or on any other date subsequently. However, from the facts of the case and submissions made by the appellant, I have reason to believe that though personal hearing was fixed on 25-5-2021, personal hearing was not held on the said date or any other date before passing order of rejection. The proviso to Rule 92 (3) envisage to provide opportunity of being heard before rejection of refund claim. In other words, conduct of personal hearing is a statutory requirement and mere fixation of personal hearing date will not suffice the requirement of Rule 92 (3) of CGST Rules, 2017. Therefore, I find strong force in the submission of the appellant that impugned order passed without providing opportunity of personal hearing transgresses the principles of natural justice and against the Rule 92 (3) of CGST Rules, is ex-facie illegal and cannot be allowed to sustain.

9. The appellant in their ground of appeal has also raised the plea of non grant of provisional refund in terms of Section 54 (6) of CGST 2017, I find that Section 54 (6) of CGST 2017 read with Rule 91 of CGST Rules, 2017 provide for grant of provisional refund the case of any claim for refund on account of zero rated supply of goods or services or both made by registered person, on a provisional basis, ninety per cent of total amount so claimed, excluding the amount of input tax credit provisionally accepted, within seven days from the date of acknowledgement of refund claim by issue of Order in Form GST RFD 04. Further CBIC vide Circular No.125/44/2019-GST dated 18-11-2019 has also given clarification on the issue as to whether provisional refund would be given even in those cases where the proper officer prima-facie has sufficient reasons to believe that there are irregularities in the refund application which would result in rejection of whole or part of the refund amount so claimed. It is clarified that in such cases, the proper officer shall refund on a provisional basis ninety percent of the refundable amount of the claim (amount of refund claim less the inadmissible portion of refund so found) in accordance with the provisions of rule 91 of the CGST Rules However, I find that in this case, no order in RFD 04 was issued which indicate that provisional refund in terms of Section 54 (6) read with Rule 91 was not sanctioned to the appellant and hence I find that there is lapse on the part of adjudicating authority on this ground also.

10. I further find that in this case claim was made for refund of Rs.1,31,20,224/- Out of this claim amount, in the show cause notice, claim amounting to Rs.64,90,224/- was proposed.



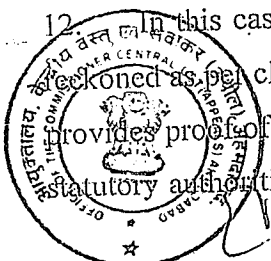
rejection on time limitation ground and mismatch of ITC. Therefore, it is apparent that there is no dispute with regard to balance claim amount of Rs.66,30,000/-. However, in the impugned order the entire claim amount was held inadmissible due to delay in filing of refund application and non submission of reply to show cause notice, the reason which is applicable only for claim amount of Rs.64,90,224/- I find that as per Rule 92 of CGST Rules, 2017, the adjudicating authority is duty bound to sanction refund admissible and due to the appellant and to initiate proceedings for rejection only for the claim amount which was found inadmissible. Since, admissibility of refund of Rs.66,30,000/- is not disputed in the show cause notice, I find that rejection of refund of Rs.66,30,000/- without any valid reason and without putting the appellant to notice is contrary to the statutory provisions and not legally sustainable and tenable.

11. Regarding the main issue of time limitation ground, I find that in this case claim was initially filed on dated 13-4-2021 for refund of ITC on export of goods and services without payment of tax for the claim period April 2019 to March 2020, against which deficiency memo under reference No.ZY2404210161683 dated 13-4-2021 was issued. On scrutiny of deficiency memo, I find that no deficiency of any nature was pointed out in the deficiency memo and the only remark made in the said deficiency memo is 'Others' but the appellant was asked to reapply after rectification of deficiencies. However, the appellant filed fresh refund claim on dated 29-4-2021 submitting various supporting documents. In this regard I find that in para 12 of CBIC Circular No. 125/44/2019-GST dated 18-11-2019 it was clarified that since a refund application filed after correction of deficiency is treated as a fresh refund application, such a rectified refund application, submitted after correction of deficiencies, shall also have to be submitted within 2 years of the relevant date, as defined in the explanation after sub-section (14) of section 54 of the CGST Act. Therefore, in this case the date of filing of fresh refund application on dated 29-4-2021 is to be taken for determining the due date for filing of refund application under Section 54 of CGST Act, 2017. As per Section 54 of CGST Act, 2017 the time limit for filing refund application is two years from the relevant date specified under Explanation 2 to Section 54. From the facts of the case, I find that claim was made for refund of ITC on account of export of services without payment of tax. As per clause (c) of Explanation 2, the relevant date in such cases is as under:

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

- (i) receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment; or*
- (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;*

12. In this case on the basis of Foreign Inward Remittance Certificates the relevant date was reckoned as per clause (i) above. Foreign Inward Remittance Certificate (FIRC) is a document that provides proof of inward remittance to India. It is treated as documentary evidence by most of the statutory authorities for confirming the validity of the foreign money received by the beneficiary.



Accordingly, I find that the due date for filing of claim in respect of FIRC's dated 3-4-2019, 5-4-2019, 8-4-2019 and 16-4-2019 falls on 2-4-2021, 4-4-2021, 7-4-2021 and 15-4-2019, respectively in terms of Section 54 of CGST Act, 2017.

13. However by virtue of Notification No.14/2021-CT dated 1-5-2021 and Notification No.24/2021-CT dated 1-6-2021, extending time limit till 30-6-2021 for completion or compliance of any action, including filing of application, for which due date falls during the period from 15-4-2021 to 29-6-2021, I find that the claim amount covered under FIRC dated 16-4-2019 is not hit by time limitation under Section 54 of CGST Act, 2017 and claim amount covered under remaining three FIRC's are hit by time limitation under Section 54 of CGST Act, 2017.

14. The appellant further defended their stand on time limitation reason referring to Notification No.15/2021 dated 18-5-2021, wherein proviso was inserted under sub rule (3) of Rule 90 of CGST Rules, 2017 as under:

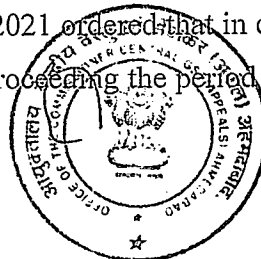
"Provided that the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORM GST RFD-03 by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.";

15. I find that the said sub rule was made effective from the date of publication in official gazette which apparently falls after 18-5-2021 and hence the above proviso is applicable prospectively only. In the subject case the claim period and date of filing claim falls before 18-5-2021. Therefore, exclusion of time period provided under said proviso is not applicable to the subject case.

16. The appellant in their ground of appeal further relied upon Orders passed by the Hon'ble Supreme Court in Re-Cognizance for extension of limitation in suo motu writ petition © No.3 of 2020 and also referred to various decisions passed by Hon'ble High Courts on the basis of Hon'ble Supreme Court's Order.

17. 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.
- 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.

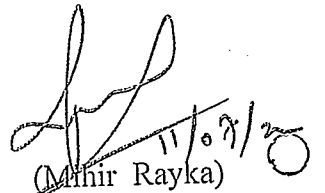
18. I have also gone through the case laws referred by the appellant and find that in the said cases, respective Hon'ble High Court's has extended the benefit of time limitation provided vide Hon'ble Supreme Court's Orders, supra, and thereby unanimously held that Order's passed by the Hon'ble Supreme Court is equally applicable for determining time limit for filing refund claims under Section 54 of CGST Act, 2017. 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 relevant date as per clause ((c) (i) of Explanation 2, the due date for filing of refund claim under Section 54 falls in the month of April 2021, as per Table above, which is within the exclusion period granted by the Hon'ble Supreme Court. Therefore, excluding the period from 15-3-2020 to 28-2-2022 for computation of time limit, the claim filed on 29-4-2021 is not hit by time limitation. I further find that in 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 displayed. Accordingly, following the Orders passed by Hon'ble High Court, I hold that the present claim filed by the appellant on dated 29-4-2021 is not hit by time limitation prescribed under Section 54 of CGST Act, 2017 and hence the appeal succeeds on time limitation



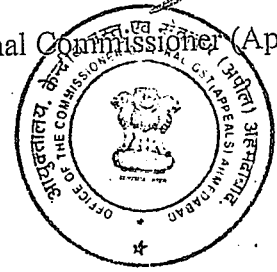
19. In view of discussions made hereinabove, I hold that the impugned order passed by the adjudicating authority without following the statutory provisions under CGST Act and Rules framed there under is not proper and legal. I further hold that claim is not hit by time limitation in view of Hon'ble Supreme Court's Order and decision of various High Courts. Therefore, in the interest of justice and fairness I allow this appeal with consequential benefit to the appellant subject to providing clarification on mis match of adjusted total turnover and turnover of zero rated supply in Statement 3A and GSTR3B. Since the claim was rejected on the ground of time limitation and non-filing of reply to SCN, the admissibility of refund on merit is not examined in this proceeding. Therefore, I further order that any claim of refund filed in consequence to this Order may be dealt with by the appropriate authority 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।

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

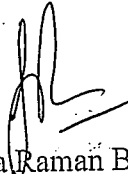

(Mihir Rayka)

Additional Commissioner (Appeals)



Date :

Attested



(Sankar Raman B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad
By RPAD

To,

M/s.Synoptek India Private Limited,
I Floor, B Block, Mondeal Heights,
SG Road, Ahmedabad 380 015

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