



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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टेलिफैक्स 07926305136



DIN- 202208645W000000AB32

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2462/2021 -APPEAL / 3132 - 37

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-87/2022-23**  
दिनांक Date : **24-08-2022** जारी करने की तारीख Date of Issue : **24-08-2022**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZZ2408210083165 dated 06.08.2021** issued by Assistant Commissioner, Division VII, Satellite, Ahmedabad South

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

**M/s. Seaways Liner Agencies Private Limited, Maxicon Shipping Agencies Division of Seaways Liner Agencies Private Limited, 119, Abhinav Arcade, Pritamnagar Ellisbridge, Ahmedabad, Gujarat-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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax ( Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a>



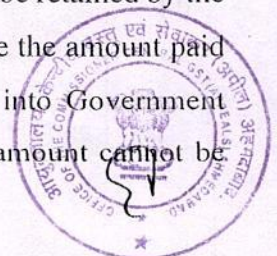


## ORDER IN APPEAL

M/s.Seaways Liner Agencies Private Limited, Maxicon Shipping Agencies Division of Seaways Liner Agencies Private Limited, 119, Abhinav Arcade, Pritamnagar, Ellisbridge, Ahmedabad 380 006 (hereinafter referred to as the appellant) has filed the present appeal online on dated 29-10-2021 against Order No.ZZ2408210083165 dated 6-8-2021 (hereinafter referred to as the impugned order) passed by the Assistant 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 24AASCS8076R4Z2 has filed refund claim for Rs.18,252/- under ARN AA240721029167f for refund of excess payment of tax made during the month of March 2018. The appellant was issued show cause notice reference No.ZR2407210257842 dated 20-7-2021 for rejection of refund on the ground that the refund claim is time barred as per provisions of Section 54 of CGST Act, 2017. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant due to delay in refund application and on the ground mentioned in the show cause notice.

3. Being aggrieved the appellant filed the present appeal on the following grounds wherein they inter alia contended that no opportunity granted for personal hearing and OIO passed ex-parte which result in violation of principles of natural justice. The appellant relied upon various case laws in this regard. The impugned order is a non speaking order which provided no concrete findings for the disallowance of the refund. The adjudicating authority merely averred that refund is disallowed in terms of Section 54 (5) of CGST Act without providing any reason whatsoever for not allowing the refund claim. The impugned order failed to bring on record any ground on which the substantial benefit of refund of excess amount paid can be retained by the Government. The appellant relied upon various case laws in support of their contention. The appellant further contended that refund application is not time barred. The time to file refund accrues only after the transaction was identified and considered as excess amount paid than actual liability and thus the refund claim can be filed only after such discovery. The time limit for filing refund application is only after such date and hence relevant date has to be read in terms of said facts. In the light of amendment made in Rule 89 of CGST Rules to interpret that the time limit for refund of two years in case of the refund arising out of wrong tax paid that is IGST paid on inter state supply instead of CGST/SGST than the period of refund claim arises only with effect from the date correct tax is paid in terms of Section 77 of CGST Act, 2017. The amount of Rs.18,252/- was not GST. The amount paid were considered as excess payment as there is no underlying supply of taxable services and thus the amount paid cannot be treated as CGST and SGST. The said provisions is pari materia with the Section 83 of Finance Act, 1994 read with Section 11B of Central Excise Act, 1994 wherein the time limit of refund of service tax is provided. The appellant relied upon various case laws in support of their submissions. The amount paid mistakenly is not GST cannot be retained by the Government. GST is not payable as there is no underlying taxable supply. Therefore the amount paid cannot be treated as payment of CGST and SGST and IGST. The amount paid into Government treasury cannot partake the colour of 'Tax' as GST is not payable. Therefore the amount cannot be





retained by Government which is not due to them under Law in terms of Article 226/265 of the Constitution of India. The appellant relied upon various case laws in support of their contention.

4. Personal hearing was held on dated 10-8-2022. Ms Smita Thakker, authorized representative appeared on behalf of the appellant on virtual mode. She has asked for 10 working days for additional submissions which is duly granted. Accordingly, the appellant vide letter dated 12-8-2022 submitted copy of Order in Original in their own case for similar issue of refund issued by Joint Commissioner of State Tax (Appeals), Raigad wherein the refund on account of excess payment was allowed for the FY 2017-2018 and 2018-2019. In the said case also refund was claimed post filing of Annual Return as the excess could have been brought on record only post filing of the said return and it was held that the period of limitation in terms of Section 54 of CGST Act, 2017 is not applicable. They also submitted copy of various case laws which are relied in their appeal memorandum.

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. In this case refund claim was filed on dated 9-7-2021 for excess payment of tax for the claim period March 2018 which was rejected due to time limitation under Section 54 (1) of CGST Act, 2017. As per Section 54 (1) the due date for filing refund claim is two years from relevant date and as per Explanation 2 (h) of Section 54 the relevant date is date of payment of tax. In the impugned order neither the relevant date nor the due date was mentioned for rejecting the claim on time limitation ground. However, considering the claim period and date of filing of refund application, I find that the claim was filed beyond two years from the relevant date and hence the claim was time barred in terms of Section 54 (1) of CGST Act, 2017. However, I refer to Notification No.13/2022-CT dated 5-7-2022 wherein it was notified as under:

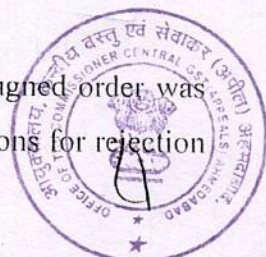
*In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021, the Government, on the recommendations of the Council, hereby,-*

*iii) excludes the period from the 1<sup>st</sup> day of March 2020 to the 28<sup>th</sup> day of February 2022 for computing the period of limitation for filing of refund application under Section 54 or Section 55 of the said Act.*

*2. This notification shall be deemed to have come into force with effect from the 1<sup>st</sup> day of March 2020.*

6. In view of above, I find that the claim filed by the appellant on 9-7-2021 for the claim period March 2018 is not hit by time limitation prescribed under Section 54 (1) of CGST Act, 2017.

7. The appellant in their grounds of appeal further taken the plea that the impugned order was passed without providing opportunity of personal hearing and without recording reasons for rejection



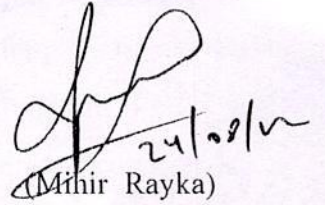


of refund claim. As per Rule 92 of CGST Rules, 2017 it is a statutory requirement to issue show cause notice; consider the reply filed by the claimant; provide opportunity of personal hearing and record the reasons in writing for rejection of refund claim. Even otherwise, opportunity of personal hearing is one of the principles of natural justice and it is very well settled principle of Law that no adverse order should be passed without providing opportunity of being heard. However it does not transpire from the impugned order as to whether personal hearing was held before rejecting the refund claim.

8. In view of above, I hold that the impugned order passed by the adjudicating authority rejecting refund on time limitation reason does not sustain. Since the claim was rejected on time limitation ground the admissibility of refund on merit is not examined in this proceeding. Therefore, I order that any claim of refund filed in consequent to this Order may be dealt with by the appropriate authority in terms of Section 54 of CGST Act, 2017 read with Rules framed thereunder and after observing principles of natural justice. Accordingly, I set aside the impugned order and allow the appeal filed by the appeal.

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

8. 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.Seaways Liner Agencies Private Limited,  
Maxicon Shipping Agencies  
Division of Seaways Liner Agencies Private Limited,  
119, Abhinav Arcade, Pritamnagar, Ellisbridge, 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 Assistant Commissioner, CGST, Division VII (Satellite) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

