



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 07926305065-

टेलिफैक्स 07926305136



DIN- 20230964SW000000E63E

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1199/2023 -APPEAL / 2069 - 24

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-118/2023-24**

दिनांक Date : **25.09.2023** जारी करने की तारीख Date of Issue : **30.09.2023**

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZJ2401230025226 DT. 03.01.2023** issued by The Assistant Commissioner, CGST, Division-VI, Ahmedabad South

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

Appellant	Respondent
M/s Tradex Corporation, 402, 637 Building, Opp Sears Tower, Gulbai Tekra, Ahmedabad-380006 (GSTIN: 24AAAF8597R1Z6)	The Assistant Commissioner, CGST, Division-VI, Ahmedabad South

(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 <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>



**1 ORDER-IN-APPEAL****Brief Facts of the Case :**

**M/s. Tradex Corporation**, 402, 637 Building, Opp. Sears Tower, Gulbai Tekra, Ahmedabad - 380006 (hereinafter referred as '**Appellant**') has filed the present appeal against the Rejection Order in the form RFD-06 bearing No. ZL2401230025226 dated 03.01.2023 (hereinafter referred as '**impugned order**') passed by the Assistant Commissioner, CGST, Division - VI, Ahmedabad South (hereinafter referred as '**adjudicating authority**').

2. Briefly stated the facts of the case is that the '**Appellant**' is holding GST Registration - GSTIN No.24AAAF8597R1Z6 and are partnership firm doing a business of trading in all type of chemicals. The appellant had filed the refund application under category "**Any other (specify)**" vide ARN No. AA241122007761U dated 03.11.2022 Rs.1,15,132/- (CGST Rs. 57566/- plus SGST Rs.57566/-) for the tax period April'2018. Accordingly, show cause notice under ARN No.AA241122007761U dated 03.11.2022 in RFD-08 was served to the claimant to show cause as why ;-

*"During verification of refund claim, it is found that the claimant had earlier also filed such refund claim vide ARN No. AA240121064188K dated 20.01.2021 under the category "excess payment of tax, if any" for Rs.1,15,132/- (CGST Rs. 57566/- plus SGST Rs.57566/-) for the same amount and same period.*

*The said refund application was rejected by the Deputy Commissioner, Division- VI, CGST, Ahmedabad South vide his order 'impugned order' No. Z02402210097992 dated 08.02.2021 in form RFD-06 on the grounds that the refund claim was time barred.*

*In this regard, it is to submit that once a refund claim has been rejected by JDC/JA, then filing of appeal before an appropriate authority is the only remedy. Since, your refund claim had already been rejected vide order dated 08.02.2021, therefore your present refund applicable which is for the same period and same matter cannot be entertained. Therefore, in view of the above, you are required to show cause as to why the refund claim filed by you should not be rejected".*

3. As the appellant failed to appear before the Adjudicating Authority on 16.12.2022, the adjudicating authority vide his impugned order rejected the refund claim of the appellant on the grounds that (i) they had already applied for the refund claim which was rejected and the claimant neither replied to the show cause notice dated 16.12.2022 nor attended the personal hearing, (ii) as already the refund claim filed earlier was rejected by the then adjudicating authority as time barred, the present refund claim for the same period and same amount cannot be entertained.

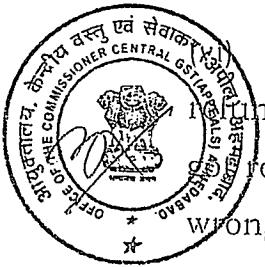
4. Aggrieved by the aforesaid order of the adjudicating authority, the appellant has preferred appeal under Rule 107 of the CGST Act, 2017 on the following grounds;

- (i) that they are partnership firm engaged in trading business of all types of chemicals under CGST Act 2017
- (ii) that they are dis-satisfied by the order passed by the adjudicating authority who has erred in considering the Notification and Circulars of Central Tax declared for the refund application.
- (iii) that they had filed annual GST return GSTR-9 and GSTR-9C on ARN AA240319072023J and AA2403190782164 both dated 26.12.2020. At that relevant point of time they were not in a position to adjust the respective credit in their annual return due payment. So, they had paid additional cash against these dues vide DRC-03 with ARN No.AD24120010518Q dated 26.12.2020.
- (iv) that the Central Government had extended the time limit for filing of annual return till December-2020, due to which they filed their claims after filing their annual returns 9 and 9C.
- (v) that as per Board's Circular No.162/18/2021-GST, any refund application can be claimed anytime from the date of payment upto 2 years from the date of correct head payment.

that the appellant had filed twice on 04.01.2021 in the GST website and claim for Rs.115132/- (CGST + SGST) in any other category, but as it was rejected by the concerned officer with a remark "Refund claim is applied in wrong head. It may be applied under the excess payment of tax category. So, again they filed another refund claim dated 20.01.2021 in the excess payment category, which was also rejected on the grounds that its time barred.

(vii) On issuance of the Board's Circular No.162/18/2021-GST dated 25.09.2021 and Notification No.35/2021-Central Tax dated 24.09.2021, they again applied for refund claim for the same amount on 03.11.2022 and it was rejected with issuance of SCN dated 16.12.2022. As they were busy in filing annual GST returns, they did not respond to the show cause notice issued by the jurisdictional Deputy Commissioner.

5. Opportunity for personal hearing was granted to the appellant on 26.07.2023, whereby Mr.Amit C Shah, Advocate and Mr. Karan K.Patni, Practitioner, both appeared before the appellate authority as authorized representative of the appellant. During the course of personal hearing, it was submitted that it is a case of payment of tax in wrong head i.e., they had paid IGST in the head of CGST and SGST. When the mistake came to their notice



again they had paid in correct head i.e. IGST. Since tax is paid two times, refund claim was filed which has been rejected on the ground of time bar. To resolve this issue, Circular No.162/18/2021-GST dated 25.09.2021, was issued and their case is squarely falls under the category (scenario-1) and Refund was filed within time limit as per the aforesaid circular, and requested to allow appeal.

### DISCUSSIONS & FINDINGS

6. I have carefully gone through the facts of the case and submissions made by the appellant at the time of personal hearing. The said refund claim is rejected vide *impugned order* and accordingly, *appellant* has challenged the *impugned order* under present appeal proceedings. On scrutiny of the appeal filed by the appellant, I find, nowhere in the appeal, the appellant ever mentioned that they had paid tax of IGST wrongly under the head of CGST and SGST and the same has been nullified by paying extra tax on the correct head i.e., IGST. On going through the show cause notice and the impugned order issued by the adjudicating authority, throughout the document it is mentioned that the appellant had filed refund claim of Rs.115132/- ( CGST-Rs.57566/- plus SGST Rs.57566/-) vide ARN No. AA241122007761U dated 03.11.2022 for the period April 2018 and earlier also for the same amount for same period vide No. AA240121064188K dated 20.01.2021 which was rejected on limitations of time.

During the course of personal hearing only, the authorized representative of the appellant clarified and stated that they had paid tax of IGST wrongly under the head of CGST and SGST and again paid tax under the correct head i.e., IGST.

8. Further, the reference quoted by the appellant during the course of personal hearing that as per proviso to CBIC Circular No.162/18/2021-GST dated 25.09.2021, and the Notification No.35/2021 dated 24.09.2021, they can rectify such mistakes and illustration-1 is squarely applicable in their case and their refund application is within time limit.

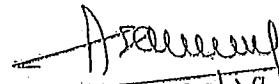
9. As per the aforesaid circular, the first refund claim filed by the appellant was on 20.01.2021, i.e., prior to issuance of the Circular No.162/18/2021-GST dated 25.09.2021. Accordingly, though the appellant filed their refund claim on 20.01.2021, their refund claim pertains to the period April'2018 and hence the two years period lapses by April'2020, i.e., even before the issuance of the aforementioned circular and the refund claim was decided and rejected as time barred. I find that the appellant has again filed the refund claim instead of filing appeal against the rejection order passed by the Refund Sanctioning Authority.

10. I also find that, as contended by the adjudicating authority in his impugned order, the appellant has neither submitted any reply to the show cause notice issued to them, nor appeared for personal hearing fixed at both the occasions. Once the appellant's refund claim filed on 20.01.2021 got rejected on 08.02.2021 vide RFID-06 Z02402210097992 dated 08.02.2021, they were supposed to approach the first appellate authority under section 107 of the CGST Act, 2017 if they were concerned about their rejected refund claim. I find that the appellant instead again filed their refund claim on 03.11.2022 for the same amount of Rs.115132/- (CGST Rs.57566/- plus SGST Rs.57566/-) on the same grounds pertaining to the same period ie. April 2018, which was rejected by the Refund Sanctioning Authority vide impugned OIO No. ZL2401230025226 dated 03.01.2023. Even the present appeal filed by the appellant does not contain the facts of the case that in past also their claim was rejected. From the above facts it is clear that the appellant has not followed the legal recourse available under Section 107 of CGST 2017 against rejection of refund claim filed on 20.01.2021 and instead again filed the refund. Thus the rejection of the said claim is legal and proper in the eyes of law.

11. In view of the above facts and discussions, I do not find any infirmity in the impugned OIO and no merit in the appeal filed by the appellant and hereby reject the appeal.

12. अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

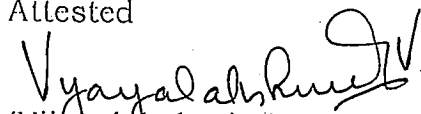
The appeal filed by the appellant stands disposed of in above terms.

  
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date : .09.2023

Attested

  
(Vijayalakshmi V)  
Superintendent  
Central Tax (Appeals),  
Ahmedabad



By RPAD

To,

M/s. Tradex Corporation  
402, 637 Building, Opp Sears Tower,  
Gulbai Tekra, 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 VI, Ahmedabad South



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

