



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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DIN- 20231164SW0000666F5E

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1360/2023 -APPEAL

18269 - 9h

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC- 151 /2023-24**

दिनांक Date : **31.10.2023** जारी करने की तारीख Date of Issue : 20.11.2023

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. GEXCOM/RFD/GST/9586/2022-CGST-DIV-5-Commrte- Ahmedabad dated 13.12.2022 issued by The Assistant Commissioner, CGST, Division-V, Ahmedabad South.

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

Appellant	Respondent
M/s. AIA Engineering Limited, 115, G.V.M.M. Estate, Odhav Road, Odhav Ahmedabad, Gujarat-380054	The Assistant Commissioner, CGST & CX, Div-V Rakhial, 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) 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. AIA Engineering Limited, 115, G.V.M.M. Estate, Odhav Road, Odhav Ahmedabad, Gujarat - 380054 (hereinafter referred as 'Appellant') has filed appeal against the Refund Rejection order No.GEXCOM/RFD/GST/9586/2022-CGST-DIV-5-Commte-Ahmedabad dated 13.12.2022 in the form RFD-06 (hereinafter referred as 'impugned order') passed by the Assistant Commissioner, CGST, Division - V, Ahmedabad South (hereinafter referred as 'adjudicating authority').

2. Brief facts of the case are the appellant had filed refund claim of the interest paid on IGST discharged on ocean freight under RCM for an amount of Rs. 19,46,149/- for the period July 2017 to August 2018 on 20.09.2022 under ARN No.AA240922065170I. On scrutiny of the refund claim, certain discrepancies were noticed and accordingly show cause notice having reference no. ZJ2411220198947 dated 18.11.2022 was issued to the appellant and personal hearing on 08.12.2022 was granted upon reply received from the claimant. The adjudicating authority rejected the refund claim by relying upon the Supreme Court judgement in the case of Mafatlal Industries Ltd. whereby it was held that when any such provision in the statute has been held to be unconstitutional, refund of tax under such statute will be outside the scope of and purview of each enactment (in present case, GST Act) and under such circumstances, refund can only be claimed by way of a suit or by way of a writ

Aggrieved by the impugned order, the appellant filed appeal on 13.03.2023 on the following grounds:-

(i) The instant refund claim has been filed on the basis of judgement of other taxpayer and not on the basis of judgement in their own case. As in case of M/s. Mafatlal Industries Ltd. Vs UOI [1997(89) ELT 247 (S.C.) has clearly stated that if the levy or imposition was held to be unconstitutional or illegal or not exigible in law, in a similar case filed by some other person, the assessee who had already lost the battle in a proceeding initiated by him or has otherwise abandoned the claim cannot, take advantage of the subsequent declaration rendered in another case where the levy is held to be unconstitutional, illegal or not exigible in law. The claim will be unsustainable and barred by res judicata but only for the period for which action was laid and lost.

(ii) in the present case, no proceedings and/or any assessments were initiated against the appellant, which culminated into an order and subsequently lost by the appellant for GST on ocean freight. That they had filed their refund claim only of the pronouncement of decision of Hon'ble Supreme Court and GHC in the case of Mohit Minerals Pvt Ltd. and lost the refund proceedings.

(iii) Due to the judgements in the Mohit Minerals Pvt Ltd., GST itself is not

payable, the interest paid by them on the delayed payment of GST for the period from July 2017 to August 2018 was also not required to be paid, hence, the interest amount paid by them is liable to be refunded.

(iv) The appellant submits that suit or writ is not relevant for the present matter as there exists an alternate remedy under GST law to claim refund under any other category. Further, the matter has already attained finality vide decision in the case of Mohit Minerals (supra) and therefore, the Appellant's refund claim should be allowed on this ground alone.

(v) The appellant submits that once a levy is held ultra vires, the levy is ultra vires for all the assesses and not just for one or two assesses who are party to the decision. Thus the decision of Mohit Minerals should be made applicable to all assesses as principle and cannot be applied to one person alone.

(vi) The appellant has relied upon the following case laws to support their contentions;-

- a. Solonah Tea Co. Ltd. v Supdt of Taxes, Nowgong
- b. Idea Cellular Ltd. v UOI
- c. Indorama Industries Ltd. v UOI & Ors
- d. Rawmet Resources (P) Ltd. v UOI
- e. Torrent Power Ltd v UOI
- f. Doypack Systems Pvt Ltd., v UOI

(vii) The refund claim has been filed based on the judgement of the Supreme Court in the matter of Ocean Freight declaring levy of GST on ocean freight where the goods or service are bought on CIF basis as unconstitutional; In this context section 54 of the CGST Act, 2017 gives power to proper officer to sanction refund in specific cases on the basis of completion of certain conditions. The present claim is filed based on the judgement of the SC in the case of Mohit Minerals Pvt Ltd., wherein the levy of GST on ocean freight was declared as ultra vires, the present refund claim, does not fall under any of the category of refund prescribed under Section 54 of the CGST Act.

(viii) The applicant has complied and completed all the requirements and/or conditions provided under Section 54 of the CGST Act. As per Section 54(1) of the CGST Act, any person may claim refund of any tax and interest, if any, paid on such tax any other amount paid by him, by making an application before the expiry of two years from the relevant date in such form and manner as may be prescribed.

(ix) The relevant date as per explanation to Section 54 of the CGST Act, 2017 for any other case is the date of payment of tax. In the instant case the relevant date is 19.10.2018, thus the time period of 2 years from the relevant date being 19.10.2018 expires on 19.10.2020. Notification No.13/2022-Central Tax dated 05.07.2022 excludes the period starting from 01.03.2020 to 28.02.2022 for computation of period of limitation for filing refund application under Section 54 of the CGST Act.



(x) The appellant has prayed to (i) refund entire amount of interest of Rs.19,46,149/- (ii) to set aside the impugned order dated 13.12.2022.

4. In addition to their written submissions dated , the appellant had filed additional submissions dated 27.06.2023, whereby they had relied upon few more judgements in favour of their contention that they should be granted refund of the interest paid on the IGST of the Ocean freight under RCM.

- a. Gokul Agro Resources Ltd. vs UOI of High Court of Gujarat
- b. Bharat Oman Refineries vs UOI & 1 other of GHC
- c. Comsol Energy Private Ltd. vs State of Gujarat
- d. Shree Mahesh Oil Products vs UOI of Rajasthan High Court
- e. Louis Dreyfus Company India Pvt Ltd. vs UOI GHC
- f. Krishak Bharat Co-operative Ltd. vs UOI & 1 other, GHC

Personal Hearing:-

5. Personal Hearing in the matter was held on 18.08.2023, wherein Mr. Nrupesh Machchhar, C.A. appeared on behalf of the 'Appellant' as authorized representative. During P.H. submitted that their case is covered under Section 54(1) and the refund claim is filed within the time limit specified therein giving effect of Notification No.13/2022 i.e. period from 01.03.2020 to 28.02.2022 shall be excluded for compilation of limitation for refund application. Further the adjudication order rejecting the refund is beyond the scope of SCN, therefore is against the principle of natural justice as no opportunity to explain the same has been granted. The order passed is on different footing. He further reiterated the written submission and additional submission and relied on various decisions regarding refund and interest granted on the basis of Mohit Mineral case and requested to allow their appeal.

DISCUSSIONS & FINDINGS

6. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum as well as through additional submission. The date of the impugned order is 13.12.2022 and the appeal has been filed on 13.03.2023. As per Section 107 of the CGST Act, 2017, I find that the appeal has been filed in the normal period ie., well within the time limit prescribed and accordingly, I proceed further to decide the instant case.

7. I find that the basic issue to be decided is that 'Appellant' had claimed refund of Rs.19,46,149/- paid suo moto as interest on the delayed payment of

IGST paid on the ocean freight under RCM for the period starting from July 2017 to August 2018 in 'Any other category'. The adjudicating authority vide his impugned order had rejected the refund claim on the grounds that "refund can only be claimed by way of a suit or by way of a writ petition" by relying upon the Supreme Court judgement in the case of M/s. Mafatlal Industries Ltd. 1997 [89 ELT247 (SC)].

8. The limited issue before me is whether the appellant is entitled for refund of interest, on such delayed payment of taxes on which input tax credit has been availed and refund is claimed only for the interest paid on the delayed IGST payment and not of suo-moto IGST paid and availed ITC of the same.

9. I am not getting into the merits of the admissibility of the input tax credit or leviability of tax since the issue is not before me.

10. I find from the GSTR-3B returns for the month of September, 2018 the appellant has shown an amount of Rs. 1,76,09,883/- as IGST paid under reverse charge, which is paid on ocean freight on RCM basis along with an interest amount of Rs. 1946150/- (shown in Table 5.1 of GSTR-3B) (both paid through challan CP No.18102400023962 dated 04.10.2018)(data as provided by the appellant). I also find that the appellant has utilized such IGST paid on ocean freight under RCM for payment of Tax as in Table 6.1 of the GSTR-3B (Sept.'2018). Thus, the appellant has reaped the benefits of paying IGST on Ocean freight suomoto by utilizing the credit.

It is observed that the appellant have availed the ITC of taxes paid, since they have already availed the input tax credit on the said taxes payable, interest is consequential to the delayed payment of the IGST on the ocean freight under RCM.

12. In this aspect I would like to go quote the provisions of the CGST Act under which interest is required to be paid for delayed payments of taxes.

Section 50. Interest on delayed payment of tax.-

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made there under, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

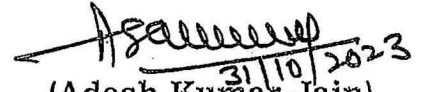
1/Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section

74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

13. The discussions above clearly specifies that as per the Supreme Court judgement in the case of Mohit Minerals Ltd. based on which the refund claim of interest amounting to Rs. 19,46,149/- on the delayed payment of IGST on ocean freight is filed by the appellant, is applicable only for refund of IGST paid on ocean freight and does not speak about the refund of interest paid on delayed payment of IGST on ocean freight. In the instant case, the appellant has utilized the IGST on ocean freight, as per the interpretations of provisions at the relevant point of time. The applicability of interest is consequential to the taxes leviable as per the provisions of Section 50 of CGST Act, 2017. Therefore, in this case since IGST is paid and also the appellant has availed the ITC, I do not find any substance on the ground put forth by the appellant for refund of interest paid by them.

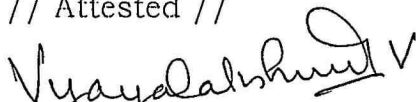
14. In view of the above discussions and facts, I do not find any force in the contentions of the appellant and the impugned Order-in-Original is upheld and the appeal filed by the appellant is rejected.

15. अपीलकर्ता 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: .10.2023

// Attested //


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



By R.P.A.D.
To,

M/s. AIA Engineering Ltd.
115, GVMM Estate, Odhav Road
Odhav
Ahmedabad, Gujarat - 382410

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Dy/Asstt. Commissioner, CGST, Division-V, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
- ~~6. Guard File.~~
7. P.A. File

