



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-

टेलिफैक्स07926305136



DIN- 20231164SW0000333AA4

रजिस्टर्ड डॉक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2927/2023 -APPEAL 14503 - 8508

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 154 /2023-24

दिनांक Date :10.11.2023 जारी करने की तारीख Date of Issue : 28.11.2023

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. ZQ2403210271293 dt. 18/03/2021 issued by The Deputy Commissioner, CGST & CX, Division V (Odhav), Ahmedabad South.

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

Appellant	Respondent
M/s K M Enterprise (Legal Name – Mangaram Ganesharam Chaudhari), Madhuram Estate, B-80, Nr. Ring Road, Odhav, , Ahmeabad - 382445	The Deputy Commissioner, CGST & CX, , Division V (Odhav), Ahmedabad South

(A)	इस आदेश(अपील) से व्यक्ति 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 08.12.2019 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 अपीलार्थी प्राधिकारी को अपील दायर करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट:www.cbic.gov.in पर 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

Brief Facts of the Case :-

M/s. K. M. Enterprise, (Legal Name: Mangaram Ganesharam Chaudhari), Madhuram Estate, B-80, Near Ring Road, Odhav, Ahmedabad -382445 (hereinafter referred as '*Appellant*') has filed the following appeal against the Refund Sanction/Rejection order in the form RFD-06 Order (hereinafter referred as '*impugned order*') passed by the Deputy Commissioner, CGST, Division - V-Odhav, Ahmedabad South Commissionerate (hereinafter referred as '*adjudicating authority*').

2. Facts of the case, in brief, are that the *appellant* is registered under the Central Goods and Services Tax Act, 2017 vide GST Registration GSTIN 24AIWPC1115E2ZP. The appellant had applied for refund under section 54 of CGST Act, 2017, on account of ITC accumulated due to inverted tax structure as on 02.02.2021 of Rs.2,96,540/-. The adjudicating authority has rejected the refund application on the ground that reply to the Show Cause Notice has not been filed. A Show Cause Notice was issued to the appellant on 04.03.2021, wherein it was proposed that refund application is liable to be rejected on account of miss match of ITC.

3. Further, the adjudicating authority has rejected their refund application by passing impugned orders No. ZQ2403210271293, dated 18.03.2021 with a remark that "*reply/compliance to the SCN not provide*".

Being aggrieved with the *impugned order*, the *appellant* has preferred the present appeal online on 23.03.2021 and submitted the documents in this office on 27.07.2023. In the appeal memo the appellant has submitted that

- That *reply to the Show Cause Notice has been filed and without considering that officer has issued refund rejection order with remarks that reply to the show cause notice has not been filed.*

Personal Hearing :-

4. Personal Hearing in the matter was held on 26.10.2023. Mr. Rishabh Ajaykumar Kariya appeared as authorized representative. During Personal Hearing he has stated that the O-I-O is passed stating that "Compliance to SCN not provided" but the reply to SCN has been filed vide ARN-ZT2403210064737 dated 13.03.2021, well before the time in SCN. He further requested to condone delay on filing physical copies, thought they have filed online appeal on time. Further he reiterated the written submission as per appeal memorandum.



Discussion and Findings :-

5. I have gone through the facts of the case, written submissions made by the 'Appellant'. I find that the 'Appellant' has filed the refund application under section 54 of CGST Act, 2017 on account of ITC accumulated due to inverted tax structure as on 02.02.2021 of Rs.2,96,540/-. The said refund claim was rejected by the impugned order and accordingly the 'Appellant' filed the appeal online on 23.03.2021 and submitted the copy of order appealed against on 27.07.2023.

6. In the instant case I find that the main issues to be decided in the instant case is (i) whether the appeal has been filed within the prescribed time- limit and (ii) whether the appeal filed by the appellant against the impugned order for claiming refund on account of ITC accumulated due to inverted tax structure of Rs.2,96,540/- is legal or not.

7. First of all, I would like to take up the issue of filing the appeal and before deciding the issue of filing the appeal on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:

SECTION 107. Appeals to Appellate Authority. — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

.....

 The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

8(i). I observed from the submission of appellant that in the instant case the appeal has been filed online on 23.03.2021 and submitted the copy of order appealed against on 27.07.2023. Accordingly, it is pertinent to refer Rule 108 of the CGST Rules, 2017. The same is reproduced as under:

Rule 108. Appeal to the Appellate Authority.-

(1) An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in **FORM GST APL-01**, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.

(2) The grounds of appeal and the form of verification as contained in **FORM GST APL-01** shall be signed in the manner specified in rule 26.

(3) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number,

shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of **FORM GST APL-01** and a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of **FORM GST APL-01**, the date of submission of such copy shall be considered as the date of filing of appeal.]

Explanation. -For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.


8(ii). In view of above provisions, it is observed that Rule 108(3) of the CGST Rules 2017 has been amended vide Notification No. 26/2022-CT dated 26.12.2022 wherein, where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal. However in the instant case the appeal has been filed online on 23.03.2021 and submitted the copy of order appealed against on 27.07.2023. Accordingly as per the above notification the date of filing of appeals will be 27.07.2023, as the appellant has submitted the copy of order appealed against on 27.07.2023.

9(i). Further it is observed that the Hon'ble Supreme Court has passed order on 10.01.2022 in matter of Miscellaneous Application No. 21 of 2022 in M.A. 665 of 2021, in SMW(C) No. 3 of 2020. Hon'ble Supreme Court vide Order dated 10.01.2022 ordered that for computing period of limitation for any suit, appeal, application or proceedings the period from 15.03.2020 till 28.02.2022 shall stand excluded and consequently balance period of limitation remaining as on 03.10.2021 if any, shall become available with effect from 01.03.2022 and that in cases where the limitation would have expired during the period from 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.



9(ii). In the present matter, the "impugned order" is of 18.03.2021 so, the normal appeal period of three months was available up to 18.06.2021 whereas, the present appeal is filed on 27.07.2023. However, in view of above order of Hon'ble Supreme Court by excluding the period from 15.03.2020 till 28.02.2022 and considering 90 days from 01.03.2022, the last date for filing of appeal comes to 01.06.2022. In the present matter the appeal is filed on 27.07.2023. Accordingly, in view of foregoing I find that the present appeal is filed beyond the time limit as prescribed under Section 107(1) of the CGST Act, 2017. Further, looking to the COD application of Appellant, I observed that even after condoning delay of filing of appeal for a further period of one month as per provisions of sub section (4) of Section 107 of the CGST Act, 2017 the last date for filing of appeal comes on 01.07.2022, whereas the present appeal is filed on 27.07.2023.

10. In view of foregoing, I find that the present appeal is filed beyond the time limit prescribed under the provisions of Section 107 of the CGST Act, 2017. Accordingly, I find that the further proceedings in case of present appeal can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.



I find that this appellate authority is a creature of the statute and act as per the provisions contained in the CGST Act. This appellate authority, therefore, cannot condone delay beyond the period permissible under the CGST Act. When the legislature has intended the appellate authority to entertain the appeal by condoning further delay of only one month, this appellate authority cannot go beyond the power vested by the legislature. My views are supported by the following case laws:

- (i) The Hon'ble Supreme Court in the case of **Singh Enterprises** reported as 2008 (221) E.L.T.163 (S.C.) has held as under:

"8. ...The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."


- (ii) In the case of Makjai Laboratories Pvt Ltd reported as 2011 (274) E.L.T. 48 (Bom.), the Hon'ble Bombay High Court held that the Commissioner (Appeals) cannot condone delay beyond further period of 30 days from initial period of 60 days and that provisions of Limitation Act, 1963 is not applicable in such cases as Commissioner (Appeals) is not a Court.
- (iii) The Hon'ble High Court of Delhi in the case of Delta Impex reported as 2004 (173) E.L.T. 449 (Del) held that the Appellate authority has no jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days.

12. I find that the provisions of Section 107 of the Central Goods and Services Tax Act, 2017 are *pari materia* with the provisions of Section 85 of the Finance Act, 1994 and Section 35 of the Central Excise Act, 1944 and hence, the above judgments would be squarely applicable to the present appeal also.

13. By following the above judgments, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under proviso to Section 107(4) of the Act. Thus, the appeal filed by the *appellant* is reject on the grounds of limitation as not filed within the prescribed time limit in terms of the provisions of Section 107 of the CGST Act, 2017. I, accordingly, reject the present appeal.

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.


10/11/2023
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 10.11.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)
By R.P.A.D.

To,
M/s. K. M. Enterprise,
(Legal Name: Mangaram Ganesharam Chaudhari),
Madhuram Estate, B-80, Near Ring Road,
Odhav, Ahmedabad -382445.

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 Commissionerate.
4. The Deputy/Assistant Commissioner, CGST, Division- V-Oth Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File.

