



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- 20240364SW0000520169

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/709/2024 -APPEAL

/2304 - 09

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 232 /2023-24

दिनांक Date : 29.02.2024 जारी करने की तारीख Date of Issue : 01.03.2024

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

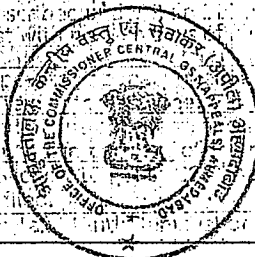
Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. ZF2409230152768 dated 12.09.2023 issued by The Assistant Commissioner, CGST Div-VII, Ahmedabad South

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

Appellant	Respondent
M/s Gujarat Tea Processors & Packers Limited, Waghibakri House, opp. Parimal Garden, Ambawadi, Ahmedabad-380006.	The Assistant Commissioner, CGST Div-VII, 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. Gujarat Tea Processors & Packers Ltd., Waghbakri House, Opp. Parimal Garden, Ambawadi, Ahmedabad 380 006 Gujarat, (*hereinafter referred as 'appellant'*) has filed the present appeal against the Order No. ZF2409230152768 dated 12.09.2023 passed in the Form-GST-RFD-06 (*hereinafter referred as 'impugned order'*) rejecting refund of CGST - 16,58,212/-, issued by the Assistant Commissioner of CGST & Central Excise, Division - VII, Ahmedabad South Commissionerate (*hereinafter referred as 'adjudicating authority'*).

2. The '*appellant*' is holding GST Registration No.24AAACG5594L1ZA had filed refund under RFD-01 vide ARN No.AA240623112427J dated 29.06.2023 for an amount of Rs.16,58,212 for the period August'2022 in the category of Any Other(Specify). The refund claim was filed on the grounds that they had paid GST on the Notice Pay Amount recovered from the employees during the period July'2017 to June'2022 and vide Board's Circular No.178/10/2022-GST dated 03.08.2022, it was clarified that forfeiture of salary or payment of amount as per employment bond for leaving the employment before minimum notice period is not a consideration for tolerating an act or situation, therefore this transaction does not constitute to be supply as per GST legislation and hence there shall be no GST liability on such recovery. Accordingly, they had filed the present refund claim for the amount of GST paid by them on the notice pay recovered from their employees.

3. On scrutiny of the present refund claim some discrepancies were observed and accordingly SCN dated 24.08.2023 under ARN No.ZF2408230356690 was issued to the appellant. Further, the refund claim of Rs. 16,58,212/- was rejected vide impugned order dated 12.09.2023 on the following grounds:

- i. Refund claim failed on the basis of the judgement issued in respect of other taxpayer and not in their own case;
- ii. No where in Section 54 of the CGST Act, 2017, the category of the refund claimed appears;
- iii. The Circular No.178/10/2022-GST dated 03.08.2022, under which the refund has been claimed has come into force from 03.08.2022 and not retrospectively as claimed by the claimant.

4. Being aggrieved with the impugned order, the appellant filed appeal before the appellate authority on 13.11.2023 on the following grounds:

- ❖ The impugned order passed by the adjudicating authority is incorrect and not tenable as the rejection is not on the ground of merit of the matter or any other technical aspects such fact of payment etc;
- ❖ The appellant had made payment of GST which was not payable. The refund claim has been that no GST was leviable on notice pay recoveries and hence when the levy was not there, the tax deposited/paid was required to be refunded;
- ❖ The Circular No. 178/10/2022-GST dated 03.08.2022 has merely clarified the legal position and it will operate for the past period also. It is noteworthy that there is no change in law which would require the operation of the circular dependent, hence the adjudicating authority's observation is incorrect. The amount deposited not in the nature of tax, it is outside the legal framework of GST laws
- ❖ The judgement relied upon is only to support their legal submission as to non-levy of tax.
- ❖ With the above submissions requested to allow their refund claim.

PERSONAL HEARING

5. Personal Hearing in the matter was held on 21.02.2024 wherein Shridev Vyas, Advocate appeared before me as authorized representative on behalf of the appellant and it is clarified vide Circular No.178/10/2022 para 7.5 and the amount of forfeiture of Notice Pay recovered is not taxable at all, therefore the tax paid on such amount is claimed as refund which is admissible to them. As regards the prospective applicability circulars are clarificatory in nature and law is not amended thus applicable. Further since it is a deposit so limitation will not be applicable as provided under Section 54 of the CGST Act, 2017. As regards the availment of ITC, further facts will be submitted within a week's time. No further personal hearing required.



6. Further, additional submissions dated 22.02.2024 were provided by them and intimated that they had made this amount as deposit on forward charge basis and they had not availed ITC credit and accordingly furnished a Certificate from their C.A. Shah & Shah Associates dated 22.02.2024. They also submitted that such tax under forward charge was paid by utilizing Input Tax Credit, and they have claimed this refund by way of credit to their electronic credit ledger.

DISCUSSION & FINDINGS

7. I have carefully gone through the facts of the case, and the submissions made by the appellant at the time of personal hearing and documents available on record. I find that in the instant case appeal is filed by the appellant against

The impugned order wherein refund claim of GST paid on Notice Pay recovered from employees in view of Circular No.178/10/2022-GST dated 03.08.2022.

8. 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.

(2)

(3)

(4) 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.**

I observe that in the instant case as against the *impugned order* dated 12.09.2023, the appeal has been filed online on 13.11.2023 i.e. appeal filed within the normal period prescribed under Section 107(1) of the CGST Act, 2017.

9. I observe from the impugned order, that the adjudicating authority has rejected the refund claim of the notice pay recovered from employees on the grounds that

- i. Refund claim failed on the basis of the judgement issued in respect of other taxpayer and not in their own case;
- ii. No where in Section 54 of the CGST Act, 2017, the category of the refund claimed appears;
- iii. The Circular No.178/10/2022-GST dated 03.08.2022, under which the refund has been claimed has come into force from 03.08.2022 and not retrospectively as claimed by the claimant.

10. Before getting in the issue, I would like to discuss the relevant Circular No.178/10/2022-GST dated 03.08.2022 here:

“Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5(3) of Schedule II of the CGST Act, 2017 if the same constitutes

a "supply within the meaning of the Act. Vide the subject circular, a clarification has been issued that forfeiture of salary or payment of an amount as per employment bond for leaving the employment before minimum agreed period or say notice pay is not a consideration for tolerating an act or a situation. Eventually, this transaction does not constitute to be 'supply' as per GST legislation and hence there shall be no GST liability on such recovery. The excerpts of para 7.5 of Circular No.178/10/2022-GST dated 03.08.2022 is as under:

Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

"7.5 An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation." Thus, the circular dated 03.08.2022, has given clarification that in the absence of any supply for consideration, GST on the notice pay does not exist. The amount of money received by the appellant as notice pay from erstwhile employees is not a taxable transaction for the purposes of the GST laws.



11. Now coming to Section 54(1) of the CGST Act, 2017, duly says that "any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed". The appellant, who has discharged GST as forward charges on the Notice Pay can claim refund of the same, as per the proviso to the circular dated 03.08.2022. Any clarification issued by the Board on the existing law should be treated as applying to all past transactions as well, as it is settled law that the beneficial circular must be applied retrospectively. When the appellant had discharged the GST liability on the notice pay before issuance of the

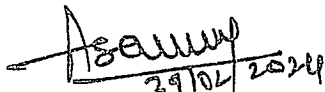
cratification by the Board, they are entitled for refund when such Tax is not leviabie subject to time limitations as provided under Section 54(1) of the CGST Act'2017. The adjudicating authority has no reason to hold that the appellant is not entitled to the benefits of the circular issued by the Board.

12. I would like to rely upon the judgement of the Kerala High Court in the case of M/s. Manappuram Finance Ltd., Vs the Assistant Commissioner, Central Tax and Excise, Thrissur Division WP(C)27373/2022 passed on 07.12.2022, whereby the claim for refund of GST paid on notice pay has been allowed by the Hon'ble High Court in favour of the petitioner.

13. In view of the above discussion and findings, I set aside the impugned order and allow the appeal. As regards the all other aspects regarding limitation, unjust enrichment etc., which are neither the part of the O-I-O nor the appeal may be examined by the refund Sanctioning Authority.

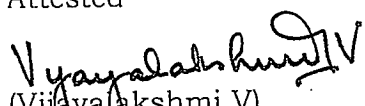
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

14. The appeal filed by the *appellant/department* stands disposed of in above terms.

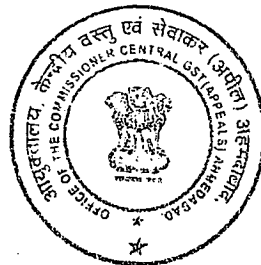

29/02/2024
(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: .02.2024

Attested


(Vijaya Lakshmi V)
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.



To,
M/s. Gujarat Tea Processors & Packers Ltd.,
Waghbakri House, Opp.Parimal Garden
Ambawadi, Ahmedabad
Gujarat - 380 006

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-VII, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
- ✓ 7. P.A. File

