



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- 20230564SW0000774410

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1194 & 1200 to 1210/2023 -APPEAL / KDM - 29

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC- 25 to 36/2023-24**

दिनांक Date : **30-05-2023** जारी करने की तारीख Date of Issue : **30-05-2023**

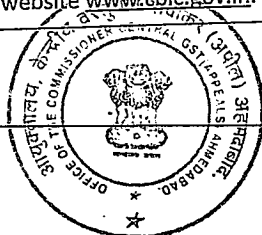
श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. ZX2404220321728 DT. 26.04.2022, ZO2409210341744 DT. 25.09.2021, ZZ2403220002072 DT. 01.03.2022, ZM2408220263266 DT. 23.08.2022, ZP2403220001716 DT. 01.01.2022, ZX2407210343742 DT. 27.07.2021, ZO2406220344542 DT. 21.06.2022, ZD2409220057167 DT. 05.09.2022, ZE2412220151126 DT. 12.12.2022, ZU2406220344642 DT. 21.06.2022, ZI2412220151159 DT. 12.12.2022 & ZL2412220151060 DT. 12.12.2022 issued by The Assistant Commissioner, CGST, Division-VI, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**M/s. Indian Potash Limited "Potash House" No. 45, Drive in Road,
Nr. Vijay Cross Road, Opp. Nirav Park, Navrangpura, Ahmedabad-380009**

(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 .

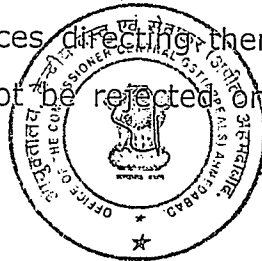


ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Indian Potash Limited, No. 45, Potash House, Drive In Road, Nr. Vijay Cross Road, Navrangpura, Ahmedabad - 380 009 (hereinafter referred as '*Appellant*') has filed the following appeals against the Refund Sanction/Rejection order in the form RFD-06 Orders (hereinafter referred as '*impugned orders*') passed by the Assistant Commissioner, CGST, Division - VI Vastrapur, Ahmedabad South (hereinafter referred as '*adjudicating authority*').

Appeal Nos.	Date of filing of Appeal	RFD-06 Order Nos. / Date of Order	Amount of Refund Rejected Rs.	Refund Claim period
GAPPL/ADC/GSTP/1206/2023	29.03.23	ZD2409220057167 / 05.09.22	7,65,25,342/-	Aug.'20
GAPPL/ADC/GSTP/1208/2023	29.03.23	ZU2406220344642 / 21.06.22	11,30,83,409/-	May'20
GAPPL/ADC/GSTP/1205/2023	29.03.23	ZO2406220344542 / 21.06.22	6,59,09,027/-	April'20
GAPPL/ADC/GSTP/1204/2023	14.03.23	ZX2407210343742 / 27.07.21	22,25,70,046/-	June'19
GAPPL/ADC/GSTP/1203/2023	14.03.23	ZP2403220001716 / 01.03.22	3,73,26,898/-	Jan'20
GAPPL/ADC/GSTP/1202/2023	29.03.23	ZM2408220263266 / 23.08.22	8,07,52,479/-	July'20
GAPPL/ADC/GSTP/1201/2023	14.03.23	<td>10,87,52,514/-</td> <td>Dec.'19</td>	10,87,52,514/-	Dec.'19
GAPPL/ADC/GSTP/1200/2023	14.03.23	ZO2409210341744 / 25.09.21	16,00,60,915/-	Aug.'19
GAPPL/ADC/GSTP/1194/2023	14.03.23	ZX2404220321728 / 26.04.22	9,02,89,078/-	Mar.'20
GAPPL/ADC/GSTP/1207/2023	29.03.23	ZE2412220151126 / 12.12.22	3,72,73,139/-	Dec.'20
GAPPL/ADC/GSTP/1210/2023	29.03.23	ZL2412220151060 / 12.12.22	11,04,69,391/-	Oct.'20
GAPPL/ADC/GSTP/1209/2023	29.03.23	ZI2412220151159 / 12.12.22	7,81,65,653/-	Nov.'20

2(i). Briefly stated the facts of the case is that the '*Appellant*' is holding GST Registration - GSTIN No.24AAACI0888H1ZM has filed the above appeals. The appellant has stated in the appeal memorandum that they are engaged in importing Fertilizers. Thereafter, they convert the fertilizers into retail packs and sells to dealers located across India. One of the Inputs i.e. packing materials is used for putting fertilizers in retail packet and is subject to tax at 18%. Since the retail pack of fertilizers is leviable to 5% of GST, the difference in rate of taxes on input and output *inter alia* has resulted in further accumulation of credits. Accordingly, in accordance with Section 54 (3) (iii) of the CGST Act, 2017 they have filed application for refund of unutilized Input Tax Credit. In response to their refund applications they received show cause notices directing them to show cause as to why the refund claims should not be rejected on the following grounds :



- There is no such Inverted Duty Structure applicable, in view of Section 54(3)(iii) read with Para 3 of Circular No. 135/05/2020-GST and para 53 of Circular No. 125/44/2019.
- That the ITC accumulation seems to be on account of lower sales value owing to subsidy.
- It does not seem to be established that accumulation of ITC pertains to packing materials.

They have filed their Reply to SCN. However, without considering their submissions, the adjudicating authority has rejected their refund applications by passing impugned orders, without providing them opportunity of being heard before passing order.

2(ii). Being aggrieved with the "impugned orders" the 'Appellant' has filed the present appeals on the following grounds -

- *Impugned orders are vague and non-speaking. The adjudicating authority has failed to give any cogent reason to reach the conclusion that the appellant is not entitled to refund. It is settled principle of law that any order that has been passed in a mechanical manner and is cryptic, is bad in law.*
- *Impugned order passed without considering submissions made by appellant and passed with predetermined mind. No opportunity of hearing was given to them before passing the order.*
- *Impugned orders has erred in understanding of facts and passed on the understanding that the imported and outward supplies of fertilizers attracts only 5% GST and hence inverted duty structure refund (IDS) is not applicable to the appellant as per Section 54(3) (iii) read with Circular No. 125/44/2019 dated 18.11.2019. The impugned orders has missed to consider the input of packing materials which attracts 18% GST against outward supply of 5%. Without Bagging of the bulk shipment imported, the Appellant would not be able to move and market the product in India.*
- *Section 54 (3) which is empowering as well as machinery provision with respect to Inverted Duty Structure (IDS) refund, makes repeated emphasis on the phrase "Un-utilized Input Tax credit". The refund under given provision is towards the unutilized portion of input tax credit. Wherein, it is submitted that it has never been the case that the refund is claimed over and above the unutilized credit lying in electronic credit ledger.*
- *Packing materials satisfies the definition of 'Input' as a good which is intended to be used for furtherance of business. The same is used*



towards outward supply. On the other hand, outward supply definition is exhaustive to include any type of sale, transfer etc. Thus, Fertilizers imports and packing materials satisfies the definition of Inputs and Fertilizers in retail packs satisfies the definition of outward supply.

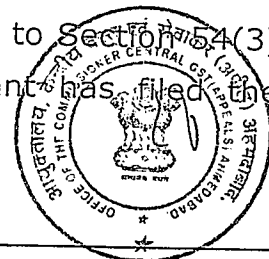
- The only eligibility criteria for claiming refund under Section 54(3) of the CGST Act, 2017 is the rate of tax of inputs being higher than rate of tax on output supplies. Once the condition is satisfied, refund must be granted to the appellant.
- Inverted Duty Structure refund is applied in accordance with mandated prescribed formula under law. The observation of Adjudicating Authority that since the packing material inputs are only minimal and are only secondary input, there cannot be accumulation of credit to qualify as inverted duty structure, is gravely erroneous as neither the CGST Act nor the Rules made thereunder restricts the refund of unutilized ITC only if the rate of a particular quantum of inputs are higher than the output supplies or make a distinction between primary or secondary inputs.

In light of above submissions and relied upon various judgments, the appellant has made prayer to set aside the *impugned orders* and grant refunds to them.

3. Personal Hearings in the matter for all aforesaid appeals as well as for Appeal No. GAPPL/ADC/GSTP/1193/2023 was held on 26.05.2023 wherein Ms. Rakhee Jain and Mr. L Sayee Mohan appeared on behalf of the 'Appellant' as authorized representatives. During P.H. they have stated that they have nothing more to add to their written submissions made till date in respect of all aforementioned appeals except appeal No. GAPPL/ADC/GSTP/1193/2023.

Discussion and Findings :

4. I have carefully gone through the facts of the case, and written submissions made by the 'appellant'. I find that the main issue involved in the present appeals are that the appellant has applied for refund of accumulated credit due to Inverted Tax Structure in light of Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017. The adjudicating authority has rejected all the refund applications vide impugned orders mainly on the ground that accumulation of Input Tax Credit seems to be on account of lower sale value owing to subsidies and not due to the situations specified under clause (ii) of first proviso to Section 54(3) of the CGST Act, 2017. Accordingly, the appellant has filed the



present appeals wherein mainly contended that they are eligible for refund under inverted tax structure as the packing materials are attracting tax @18 and output supplies attracts tax @ 5%; that the only eligibility criteria for claiming refund under Section 54(3) of the CGST Act, 2017 is the rate of tax of inputs being higher than rate of tax on output supplies and once the condition is satisfied, refund must be granted to them. I find that all the present appeals filed against all the refund rejection orders are filed beyond prescribed time-limit of three months.

5. Therefore, 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.

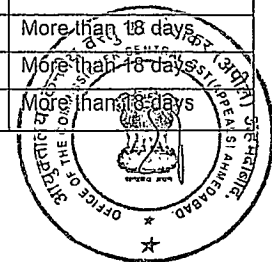
(2)

(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.

6(i). I observed that in the instant case that as against the *impugned orders*, the appeals have been filed on 14.03.23 or 29.03.23 i.e. appeal filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. The details are as under :

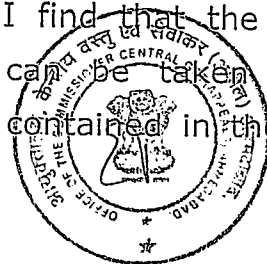
Sl. No.	RFD-06 Order Nos. / Date of Order (Impugned Orders)	As per Section 107 of CGST Act, last date of filing of appeal	Actual Date of filing of Appeal	Delayed by Period in filing appeals
1	ZD2409220057167 / 05.09.22	04.12.22	29.03.23	More than 3 months
2	ZU2406220344642 / 21.06.22	20.09.22	29.03.23	More than 6 months
3	ZO2406220344542 / 21.06.22	20.09.22	29.03.23	More than 6 months
4	ZX2407210343742 / 27.07.21	26.10.21	14.03.23	More than 16 months
5	ZP2403220001716 / 01.03.22	31.05.22	14.03.23	More than 9 months
6	ZM2408220263266 / 23.08.22	22.11.22	29.03.23	More than 4 months
7	ZZ2403220002072 / 01.03.22	31.05.22	14.03.23	More than 9 months
8	ZO2409210341744 / 25.09.21	24.12.21	14.03.23	More than 14 months
9	ZX2404220321728 / 26.04.22	25.07.22	14.03.23	More than 7 months
10	ZE2412220151126 / 12.12.22	11.03.23	29.03.23	More than 18 days
11	ZL2412220151060 / 12.12.22	11.03.23	29.03.23	More than 18 days
12	ZI2412220151159 / 12.12.22	11.03.23	29.03.23	More than 18 days



I find that though the delay in filing the appeal is condonable only for a further period of one month provided that the *appellant* was prevented by sufficient cause from presenting the appeal is shown and the delay of more than one month is not condonable under the provisions of sub section (4) of Section 107 of the Central Goods and Service Tax Act, 2017. Accordingly, filing of appeal in respect of above mentioned appeals at Sl. No. 10, 11 and 12 are condonable as per Section 107(4) of the CGST Act, 2017 by showing sufficient cause in presenting appeal. The appellant was informed vide letters dated 24.04.2023 by this appellate authority that their appeals does not contained any Condonation of Delay application. However, till date they have not filed any Condonation of Delay application stating reasons of delay in filing said appeals.

6(ii). Further, in the above context, I find 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. Accordingly, 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 01.03.22, the last date for filing of appeal comes to 29.05.2022. Further, looking to the provisions of condonation of delay, 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 29.06.2022, whereas the present appeals are filed on 14.03.2023 or 29.03.2023.

7. In view of foregoing, I find that the present appeals are 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 appeals can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.



7.

8. I find that this appellate authority is a creature of the statute and has to 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:

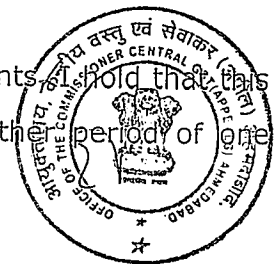
"8. ...The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain 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.

9. 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 appeals also.

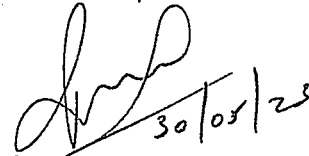
10. By respectfully following the above judgments, I hold that this appellate authority cannot condone delay beyond further period of one



month as prescribed under proviso to Section 107(4) of the Act. Thus, the appeals filed by the *appellant* are required to be dismissed 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, dismiss all the present appeals.

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

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



(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 30.05.2023

Attested

(Dilip Jadav)

Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

To,

M/s. Indian Potash Limited, No. 45, Potash House, Drive In Road,
Nr. Vijay Cross Road, Navrangpura, Ahmedabad - 380 009

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 Deputy /Assistant Commissioner, CGST & C. Ex, Division - VI
Vastrapur, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

