



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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फाइल संख्या : File No : GAPPL/ADC/GSTP/55/2023 -APPEAL / 2021-36

अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-37/2023-24**

दिनांक Date : **31-05-2023** जारी करने की तारीख Date of Issue : **31-05-2023**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

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Arising out of Order-in-Original No. **21/CGST/Ahmd-South/AC/PMC/2022 DT.**

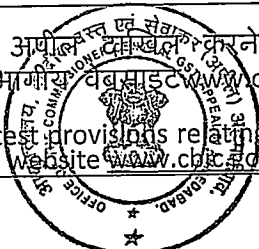
27.07.2022 issued by The Assistant Commissioner, CGST, Division-V, Ahmedabad South

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

Manoj Shyamsundar Agarwal of M/s. Shree Metals, 49/A/3, Uday Industrial Estate, Opp. GIDC Police Station, Adinathnagar, Odhav, Ahmedabad-382415

(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 .

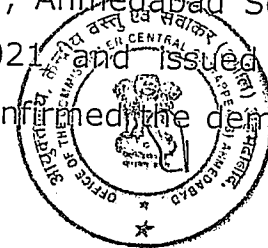


ORDER IN APPEAL**Brief Facts of the Case :-**

This appeal has been filed under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "*the Act*") by **M/s. Shree Metals (Legal Name - Manoj Shyamsundar Agarwal)**, 49/A/3, Uday Industrial Estate, Opp. GIDC Police Station, Adinathnagar, Odhav, Ahmedabad - 382 415 (hereinafter referred to as "**Appellant**") against the Order-in-Original No. 21/CGST/Ahmd-South/AC/PMC/2022 dated 27.07.2022 (hereinafter referred to as "**Impugned Order**") passed by the Assistant Commissioner, CGST & C. Ex. Division - V, Ahmedabad South (hereinafter referred to as "**the Adjudicating Authority/Proper Officer**").

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 24AEDPA0855Q1ZI.

- The appellant had applied for refund of accumulated credit due to inverted tax structure for the period from July'17 to March'18 for amount of Rs.14,10,232/-. The said refund claim was sanctioned to the appellant vide Order No. ZW2405200222961 dated 25.05.2020.
- During post audit of said refund claim it was noticed that refund claim was filed after expiry of due date i.e. time barred.
- Accordingly, said refund sanctioning order dated 25.05.2020 was reviewed by the GST Department and a Review Order No. 22/2020-21 dated 19.11.2020 was issued in this regard.
- Thereafter, an appeal was filed by the GST Department against the aforesaid refund sanctioning order dated 25.05.20 before the CGST Appellate Authority, Ahmedabad.
- In response to said appeal, the Joint Commissioner (Appeals), CGST Ahmedabad had passed OIA No. AHM-CGST-001-APP-JC-88/2021-22 dated 16.12.2021.
- According to said OIA the refund claim for the period from July'17 to February'18 was time barred and accordingly, appeal was allowed to that extent.
- Simultaneously, the GST Department had issued a demand notice vide Show Cause Notice No. 1EWS05050821002 dated 19.08.2021.
- The Assistant Commissioner, CGST, Division - V, Ahmedabad South has adjudicated the said SCN dated 19.08.2021 and issued the impugned order dated 27.07.2022, vide which confirmed the demand

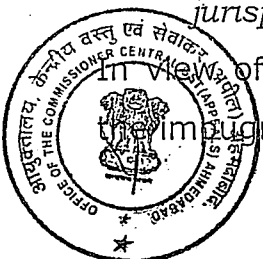


of erroneously sanctioned refund of Rs.14,10,232/- in terms of Section 73 of the CGST Act, 2017 with interest under Section 50 of the CGST Act, 2017. The Adjudicating Authority has also imposed penalty of Rs.1,41,023/- under Section 73 of the CGST Act, 2017.

3. Being aggrieved with the *impugned order* dated 27.07.2022 the *appellant* has preferred the present appeal online on 20.12.2022 and offline on 21.12.2022 i.e. certified copy of order appealed against submitted on 21.12.22 (Rule 108 of the CGST Rules, 2017). In the appeal memo the appellant has submitted that –

- *The Ld. Assessing Authority has erred in law in disallowing input tax credit of Rs.14,10,232/- without brought any material on record and purely on allegation of wrong claiming of refund.*
- *The Ld. Assessing Authority has passed the order u/s. 73 of the CGST Act wherein refund on account of ITC accumulated due to inverted tax structure was held as granted by mistake and appellant was forced to re-deposit the refund with interest and penalty. The action of assessing authority is highly unjustifiable and unlawful.*
- *The Ld. Assessing Authority has grievously erred in law in stating that adjudicating authority has sanctioned refund without considering the time limit of filing refund claim. The appellant has claimed refund by making an online application and there was no failure on the part of appellant. the appellant has relied on various notifications for making an application for refund. Therefore, order passed by assessing authority is without jurisdiction and unjustifiable.*
- *The Ld. Assessing Authority has grievously erred in law in stating that refund of Rs.14,10,232/- is required to be recovered from the appellant with interest under section 50 of the CGST Act. In fact the appellant was consistently having credit in the returns throughout the year therefore, there is no question of any liability of interest.*
- *The Ld. Assessing Authority has erred in law in imposing penalty of Rs.1,41,023/- u/s. 73 of the CGST Act where in the case of the appellant there is no mens rea, contumacious conduct or guilty of mind which lead to initiate and impose penalty.*
- *The order passed by Ld. Assessing Authority is arbitrary, illegal, bad in law and in violation of rudimentary principle of contemporary jurisprudence.*

In view of above submissions, the appellant has made prayer to set aside the *impugned order* and allowed the appeal.



4. Personal Hearing in the matter was held on 10.05.2023 wherein Mr. Varis V. Isani appeared on behalf of the 'Appellant' as authorized representative. During personal hearing he has stated that they have nothing more to add to their written submission till date.

Discussion and Findings :-

5. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue involved in the present matter is that the appellant had applied for refund of accumulated ITC due to inverted tax structure and the refund claim was sanctioned to them. However, during post audit it was pointed out that the refund application was filed after expiry of time limit i.e. time barred and accordingly, an appeal was preferred before the appellate authority. The Appellate Authority vide OIA dated 16.12.21 held that refund application for period July'17 to February'18 was time barred. Accordingly, the Adjudicating Authority has passed the impugned order dated 27.07.2022 vide which confirmed the demand of erroneously sanctioned refund of Rs.14,10,232/- with interest and also imposed penalty of Rs.1,41,023/- under Section 73 of the CGST Act, 2017. Against the said impugned order dated 27.07.2022 I observed that present appeal is filed on 20.12.2022 by the appellant. However, I find that the present appeal filed against the impugned order is filed beyond prescribed time-limit of three months.

6. 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:

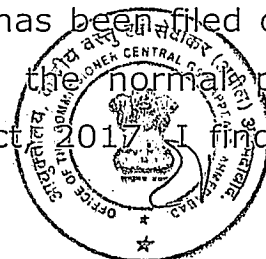
SECTION 107. Appeals to Appellate Authority. — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within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

7(i). I observed that in the instant case that as against the impugned order of dated 27.07.2022, the appeal has been filed online on 20.12.2022 i.e. appeal filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. 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.

7(ii). In the present matter, the "*impugned order*" is of 27.07.2022 so, the normal appeal period of three months was available up to 26.10.2022 whereas, the present appeal is filed online on 20.12.22. 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 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 26.11.2022, whereas the present appeal is filed online on 20.12.22.

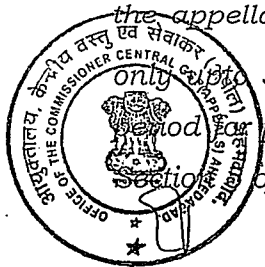
8. In view of foregoing, I find that the present appeal is filed beyond the time limit prescribed under the provisions of Section 107 of the CGST Act, 2017. Accordingly, I find that the further proceedings in case of present appeal can be taken up for consideration strictly as per the provisions contained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

9. 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 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion 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.”

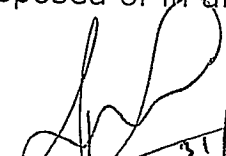
- (ii) In the case of Makjai Laboratories Pvt Ltd reported as 2011 (274) E.L.T. 48 (Bom.), the Hon'ble Bombay High Court held that the Commissioner (Appeals) cannot condone delay beyond further period of 30 days from initial period of 60 days and that provisions of Limitation Act, 1963 is not applicable 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.

10. 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.

11. 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 appeal filed by the *appellant* is 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 the present appeal.

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

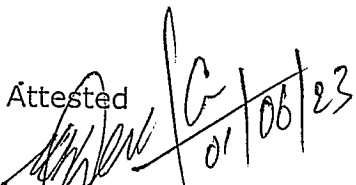
The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 31.05.2023

Attested


(Dhip Jadav)

Superintendent (Appeals)

By R.P.A.D.

To,
M/s. Shree Metals
(Legal Name – Manoj Shyamsundar Agarwal),
49/A/3, Uday Industrial Estate,
Opp. GIDC Police Station, Adinathnagar,
Odhav, Ahmedabad – 382 415



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



