



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- 20230664SW000086988E

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/789/2023 -APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-40/2023-24**

दिनांक Date : **07-06-2023** जारी करने की तारीख Date of Issue : **07-06-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZJ2408220204444 DT. 18.08.2022**

issued by The Assistant Commissioner, CGST, Division-I, Ahmedabad South

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

Alibhai Salimbhai Kuroliwala of M/s. Mona Collection, 1434/4,

Nr. Kach Ni Masjid, Bhola Ploe, Gaji Pir, Panch Pipli, Ahmedabad-380001

(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 .

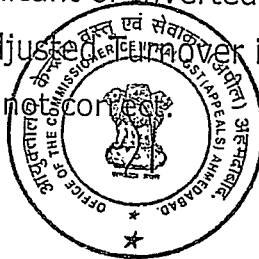


ORDER IN APPEAL**Brief Facts of the Case :-**

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. Mona Collection (Legal Name – Alibhai Salimbhai Kuroliwala)**, 1434/4, Nr. Kach ni Masjid, Bhola Ploe, Gaji Pir, Panch Pipli, Ahmedabad – 380 001 (hereinafter referred to as "**Appellant**") against the Order in Form RFD-06 No. ZJ2408220204444 dated 18.08.2022 (hereinafter referred to as "**Impugned Order**") passed by the Assistant Commissioner, CGST & C. Ex. Division - I, 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 24BQJPK1083P1ZG.

- The appellant had filed refund application under category '*Refund on account of ITC accumulated due to Inverted Tax Structure*' for the period from April'18 to March'22 for amount of Rs.1,87,338/- vide ARN AA240622114062X dated 30.06.2022.
- In response to said refund application a "*Notice for rejection of application for refund*" was issued in FORM-GST-RFD-08 dated 29.07.2022 to the '*Appellant*' wherein, it was proposed that refund application is liable to be rejected for the reasons "*Other*" with Remark as "*1. April'18 and May'18 appears time barred. 2. There is difference in adjusted total turnover and inverted turnover*".
- Thereafter, the Adjudicating Authority has rejected the refund claim of Rs.187338/- under Section 54 of the CGST Act, 2017 vide impugned order dated 18.08.2022 on the following grounds –
 - Refund claim for the period April'18 to May'18 is time barred.
 - In response to SCN, the appellant neither attended PH on 01.08.2022 nor filed reply to SCN.
 - Claimant did not submit any clarification for the queries raised in the SCN.
 - The calculation given by applicant of Inverted Turnover, Tax paid on Inverted Turnover and Adjusted Inverted Turnover is not correct.
 - The calculation of Net ITC is not correct.



- o Details of computation of refund claim amount as per the provisions of law :- As discussed above, the refund claim is inadmissible.

3. Being aggrieved with the *impugned order* dated 18.08.2022 the *appellant* has preferred the present appeal online on 18.11.2022 and offline on 10.02.2023 i.e. the certified copy of order appealed against submitted on 10.02.23 (Rule 108 of the CGST Rules, 2017). In the appeal memo the appellant has submitted that -

- *They have submitted all relevant documents with application.*
- *Appellant does not clarify SCN reply due to unaware of online responses as well as unaware SCN issue by authority.*
- *Appellant consultant not provided details regarding refund and processing.*

In view of above submissions, the appellant has made prayer to set aside the impugned order, that they agree to fulfill all relevant documents and details and allow the appeal in full.

4. Personal Hearing in the matter was held on 18.05.2023 wherein Mr. Sohil Malkani, Advocate 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 a SCN was issued to them in this regard. Through SCN it was pointed out that the refund claim for the period from April'18 & May'18 is time barred. It was also pointed out that there is difference in Adjusted Total Turnover and Inverted Turnover. However, the appellant has neither attended the personal hearing nor replied to SCN. Accordingly, the refund claim was rejected by the Adjudicating Authority vide impugned order dated 18.08.2022. Against the said impugned order the appellant has preferred the present appeal on 10.02.2023.

6. The appellant has informed in the present appeal proceedings that they have filed present appeal online on 18.11.2022 and after filing of appeal online on 18.11.2022 they have **submitted**



the certified copy of order appealed against on 10.02.2023.

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) A certified copy of the decision or order appealed against shall be submitted within seven days of filing of appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf :

Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the **FORM GST APL-01**, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

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.

Accordingly, I observed that in the instant case the appeal has been filed on 10.02.2023 i.e. appeal filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017.

7(i). 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(ii). I observed that in the instant case that as against the *impugned order* of dated 18.08.2022, the appeal has been filed on 10.02.2023 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.

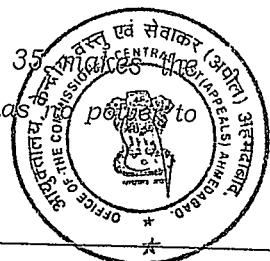
7(iii). In the present matter, the "*impugned order*" is of 18.08.2022 so, the normal appeal period of three months was available up to 17.11.2022 whereas, the present appeal is filed on 10.02.23. Accordingly, in view of foregoing I find that the present appeal is filed beyond the time limit as prescribed 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 17.12.2022, whereas the present appeal is filed on 10.02.2023.

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



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.

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)

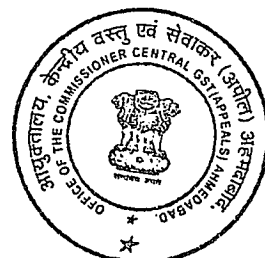
Additional Commissioner (Appeals)

Date: 07.06.2023

Attested

(Dhrip Jadav)

Superintendent (Appeals)



By R.P.A.D.

To,
M/s. Mona Collection
(Legal Name – Alibhai Salimbhai Kuroliwala),
1434/4, Nr. Kach ni Masjid, Bhola Ploe, Gaji Pir,
Panch Pipli, Ahmedabad – 380 001

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



