



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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क फाइल संख्या : File No : GAPPL/ADC/GSTP/331/2023 -APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-45/2023-24**  
दिनांक Date : **08-06-2023** जारी करने की तारीख Date of Issue : **14-06-2023**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZO2407220160621 DT. 12.07.2022**

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

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

**M/s. Namah Solutions, Second Floor, 25/26/26B, Samanvay Status,  
Padra-Atladara Road, Vadodara -391410**

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



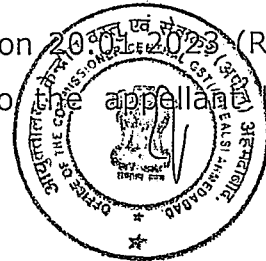
**ORDER-IN-APPEAL****Brief Facts of the Case :**

**M/s. Namah Solutions**, 25/26/26B, Second Floor, Samanvay Status, Padra-Atladara Road, Vadodara, Gujarat – 391 410 (hereinafter referred as '**Appellant**') has filed the present appeal against the Order No. ZO2407220160621 dated 12.07.2022 (hereinafter referred as '**impugned order**') passed by the Assistant Commissioner, CGST, Division – I, Ahmedabad South (hereinafter referred as '**Adjudicating Authority**').

2. Briefly stated the facts of the case is that the '**Appellant**' is holding GST Registration - GSTIN No.24AAPFN8782R1Z2 had filed the refund application on account of "**Refund of ITC on Export of Goods & Services without Payment of Tax**" for the period from April 2021 to March 2022 on dated 24.06.2022 for Rs.2,15,808/-. In response to said refund application a "**Notice for rejection of application for refund**" was issued in FORM-GST-RFD-08 dated 05.07.2022 to the '**Appellant**' wherein, it was proposed that refund applications is liable to be rejected for the reasons "**Other**" with Remark as "**The remittance value in FRC's uploaded is less than the value of the zero rated supply during the claimed period**". In response to said SCN the **Appellant** has filed their reply vide GST-RFD-09 dated 05.07.2022. Thereafter, the '**Adjudicating Authority**' has passed the **Impugned Order** as under :

- o *The appellant did not attend the PH.*
- o *In Reply to SCN the applicant attached a sheet in which FRC no's and values against the invoices are mentioned.*
- o *The Circular No. 125/44/2019 – GST clearly states for uploading of BRC/FIRC in case of export of services and shipping bill (only in case of exports made through non-EDI ports) in case of goods.*
- o *In instant case the applicant did upload FRCs for some invoices and there is mismatch of value between Invoices and FRCs.*
- o *Refund granted for Invoice No. 2 which matches with given information/documents.*
- o *In view of above, sanctioned refund of Rs.32,717/- and reject refund of Rs.1,83,090/-.*

3. Being aggrieved with the **impugned order** dated 12.07.2022 the **appellant** has preferred the present appeal online on 19.09.2022 and submitted the certified copy of order appealed against on 20.09.2023 (Rule 108 of the CGST Rules, 2017). In the appeal memo the **appellant** has submitted that –



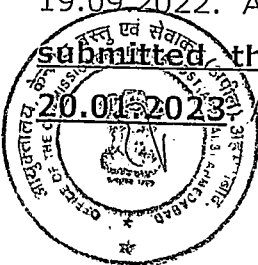
- As regards to mismatch of value between Invoices and FRCs, they submitted that FRC is not exact bill to bill it, may in odd and even payment like one or two to three bill in single FRC or it may bill some advance FRC may happened but all over FRC is not less than value of zero rated supplies.
- The respective office has made mistake in verification of data and claim wrong data with wrong amount as per impugned order.
- They have submitted all relevant documents with application.
- They have requested for taking into consideration of all documents provided by them and remaining amount of refund of Rs.1,83,091/- may be granted and disbursed to them.

4. Personal Hearing in the matter was held on 26.04.2023 wherein Mr. Pravin Vora, C.A. appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has stated that they have not been given an opportunity of being heard before passing impugned order. He has further stated that they have nothing more to add to their written submissions 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 under category "Refund of ITC on Export of Goods & Services without Payment of Tax" and a SCN was issued to them in this regard. It was alleged in the SCN that "The remittance value in FRC's uploaded is less than the value of the zero rated supply during the claimed period". The appellant had submitted Reply to SCN but did not attend the personal hearing. Thereafter, the Adjudicating Authority vide impugned order dated 12.07.2022 sanctioned refund of Rs.32,717/- and rejected refund of Rs.1,83,090/-. Against the said impugned order the appellant has preferred the present appeal.

6. The appellant has informed in the present appeal proceedings that the impugned order dated 12.07.2022 was received by them on 08.08.2022 and they have filed present appeal online on 19.09.2022. After filing of appeal online on 19.09.2022 they have submitted the certified copy of order appealed against on 20.01.2023. 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, in view of above provisions, the date of filing of present appeal has been considered as filed on 20.01.2023 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* communicated to *appellant* on dated 08.08.2022, the appeal has been filed on 20.01.2023 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.

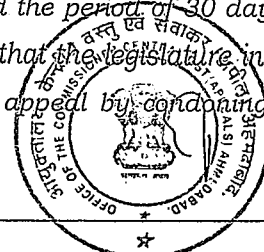
**7(iii).** In the present matter, the "*impugned order*" is communicated to *appellant* on 08.08.2022 so, the normal appeal period of three months was available up to 07.11.2022 whereas, the present appeal is filed on 20.01.23. Accordingly, in view of foregoing I find that the present appeal is filed 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 07.12.2022, whereas the present appeal is filed on 20.01.2023.

**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 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.

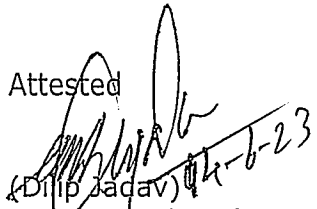
**10.** I find that the provisions of Section 107 of the Central Goods and Services Tax Act, 2017 are *pari materia* with the provisions of Section 85 of the Finance Act, 1994 and Section 35 of the Central Excise Act, 1944 and hence, the above judgments would be squarely applicable to the present appeal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

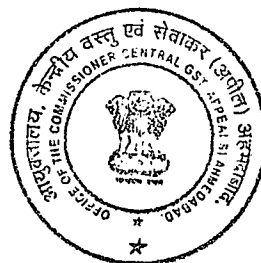
The appeal filed by the appellant stands disposed of in above terms.

Attested

  
(Dip Jadhav)  
Superintendent (Appeals)  
Central Tax, Ahmedabad

  
(Mihir Rayka)  
Additional Commissioner (Appeals)

Date: .06.2023



By R.P.A.D.

To,  
M/s. Namah Solutions,  
25/26/26B, Second Floor, Samanvay Status,  
Padra-Atladara Road, Vadodara, Gujarat - 391 410

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



