



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

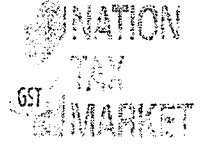
Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20240464SW0000000A71

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1308/2024-APPEAL / 4123 - 4129

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 04 /2024-25

दिनांक Date : 12.04.2024 जारी करने की तारीख Date of Issue : 16.04.2024

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

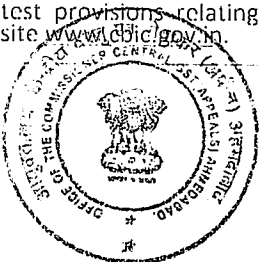
Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. Z02402210097992 dated 08.02.2021 issued by The Deputy Commissioner, Division- VI, Ahmedabad South Commissionerate.

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

Appellant	Respondent
M/s Tradex Corporation, 402, 637 Building, Opp Sears Tower, Gulbai Tekra, Ahmedabad, Gujarat, 380006	The Deputy Commissioner, Division- VI, Ahmedabad South Commissionerate

(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 <u>twenty five per cent</u> 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 Tradex Corporation, 402, 637 Building, Opp Sears Tower, Gulbai Tekra, Ahmedabad-380006 (hereinafter referred to as *the 'Appellant'*) has filed the present appeal against the Refund Sanction/Rejection Order No. ZO2402210097992 dated 08.02.2021 in the form RFD-06 Order (hereinafter referred to as the *'impugned order'*) rejecting refund amounting to Rs. 1,15,132/- (CGST Rs. 57,566/- and SGST Rs. 57,566/-) passed by the Deputy Commissioner, CGST & C. Ex., Division- VI [Vastrapur], Ahmedabad South Commissionerates (hereinafter referred to as *the 'adjudicating authority'*).

2. Briefly stated the facts of the case are that the *'Appellant'* is holding GST Registration No. 24AAAF8597R1Z6 is engaged in doing a business of trading in all type of Chemicals and other products. The appellant had filed refund application vide ARN AA2401210132429 dated 05.01.2021 for Rs. 1,15,132/- for the period from 01.04.2018 to 30.04.2018 on account of wrongly paid GST in "Other Head Category" under Section 54 of the CGST Act, 2017. But it was rejected through RFD-03 Reference no. ZW2401210093179 dated 11-01-2021 with the instruction that file a new refund application under the head "Tax Paid on IntraState Supply -later head to be interstate and vice -versa" meaning due to wrong head refund application. So again, appellant has applied for same period but as mentioned the head "Excess Payment of Tax" with same amount vide ARN-AA240121064188K dated 20-01-2021 and RFD-02-ZZ2401210247224 on dated 28-01-2021. Further the refund application was rejected vide impugned order dated 08.02.2021, mentioning that the refund claim is time barred as per the provisions of the Section 54(14) of the CGST Act 2017.

3. Being aggrieved with the impugned order dated 08.02.2021, the appellant has filed the present appeal on 11.01.2024 mainly on the following reasons-

- Recently the Central Government has announced vide notification no 53/2023 dated 02-11-2023 for those dealers who fail to file their appeal for the order passed under section 107 or section 73 or 74 can file an appeal before 31-1-2024. So, your appellant has applied to file this appeal for the sake of justice. All supporting documents against our refund application is

attach herewith for your reference. Your appellant requests your honor to grant our refund application on the basis of the government notification and circular and grant us the refund.

PERSONAL HEARING :

4. Personal Hearing in the matter was fixed/held on 15.03.2024 and 28.03.2024, wherein Shri Amit C. Shah, appeared in person on behalf of the 'Appellant' as Authorized Representative. During Personal Hearing, they have reiterated the written submission.

DISCUSSION AND FINDINGS :

5. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal. In the instant case the 'Appellant' had filed refund application vide ARN AA2401210132429 dated 05.01.2021 for Rs. 1,15,132/- for the period from 01.04.2018 to 30.04.2018 on account of wrongly paid GST in "Other Head Category" under Section 54 of the CGST Act, 2017. The main issue to be decided in the instant case is whether the appeal has been filed within the prescribed time-limit and liable for refund amounting to Rs. 1,15,132/- or otherwise?

6(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.

6(ii). In the instant case it is observed that as against the impugned order, the appeal has been filed on 08.02.2021 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	ZO2402210097992 dated 08.02.2021	08.05.2021	11.01.2024	More than 3 months (filed after 02 years 08 months)

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 appeal is condonable as per Section 107(4) of the CGST Act, 2017 by showing sufficient cause in presenting appeal.

6(iii). Further, in the above context, 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 11.01.2024. 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.

7. Further, in this regard the appellant contained that recently the Central Government has announced notification no 53/2023 dated 02-11-2023 for those dealers who fail to file their appeal for the order passed under

section 107 or section 73 or 74 can file an appeal before 31-1-2024. So, they has applied to file this appeal. In view of the above, the notification No. 53/2023 dated 02.11.2023 is reproduced below:-

"In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases."

2. The said person shall file an appeal against the said order in FORM GST ARL-01 in accordance with subsection (1) of Section 107 of the said Act, on or before 31st day of January 2024.

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.

3.

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under subsection (1) of Section 107 of the said Act.

5. No appeal under this notification shall be admissible in respect of a demand not involving tax.

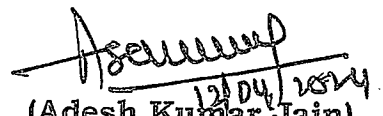
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In view of above, it is evident that, in terms of above notification, appeal can only be filed in such cases where orders have been passed by proper officer under Section 73 or 74 of CGST Act, 2017, which is not applicable in the present case. Therefore, the said issue does not fall in the ambit of aforesaid notification.

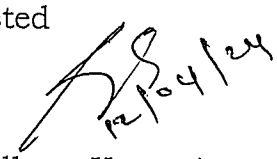
8. Thus, the appeals filed by the appellant are required to be dismissed on the grounds of limitation as not filed within the prescribed time limit in terms of the provisions of Section 107 of the CGST Act, 2017 and Notification no 53/2023 dated 02-11-2023. I, accordingly, reject the appeal filed by the appellant.

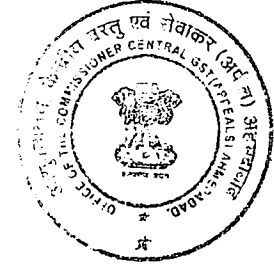
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 12.4.2024

Attested


(Sandheer Kumar)
Superintendent (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

M/s Tradex Corporation,
402, 637 Building, Opp Sears Tower,
Gulbai Tekra, Ahmedabad-380006.

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

