



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
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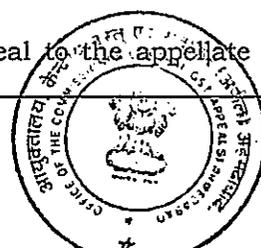


**By Regd. Post**

DIN NO. : 20220364SW00000914673

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/695/2021-APPEAL / 7038
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-105/2021-22 and 28.03.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	28.03.2022
(ङ)	Arising out of Order-In-Original No. Div-VII/GST-Refund/58/Royal/2019 dated 04.06.2019 issued by The The Assistant Commissionr, CGST & CE, Division-VII (S G Highway East), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Royal Furnisher (GSTIN-24AAAFR6298P2ZH) Address: 411, Lilamani Corporate Heights, Opp. Ramapir Tekra, New Wadaj, Ahmedabad, Gujarat-380013

(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 <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 :-**

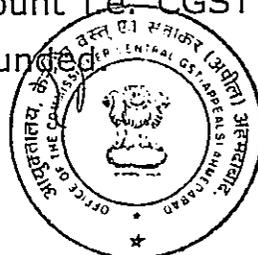
**M/s. Royal Furnishers**, 411, Lilamani Corporate Heights, Opp. Ramapir Tekra, New Wadaj, Ahmedabad - 380013 (hereinafter referred as '*appellant*') has filed the present appeal against Order No. Div-VII/GST-Refund/58/Royal/2019 dated 04.06.2019 (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, CGST & C. Ex., Division - VII, Ahmedabad North (hereinafter referred as '*adjudicating authority*').

2. Brief facts of the case are that the '*appellant*' having GST registration - GSTIN 24AAAFR6298P2ZH, had filed refund application manually on 03.05.2019 for amount of Rs.63,40,925/- for the period September 2018 to January 2019 on account of supplies to SEZ units/SEZ Developer without payment of Tax.

3. After examining the relevant documents, the *adjudicating authority* vide *impugned order* has sanctioned the refund of Rs.54,94,617/- and rejected an amount of Rs.8,46,308/- (CGST Rs.4,23,154/- & SGST Rs.4,23,154/-). The *adjudicating authority* has observed that while debiting the Electronic Credit Ledger the '*appellant*' has not followed the Board's Circular No. 59/33/2018/-GST dated 04.09.2018. As per the said Circular for refund of unutilized Input Tax Credit the amount is to be debited from the Electronic Credit Ledger in the following order :

- a) *Integrated tax, to the extent of balance available;*
- b) *Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).*

The *adjudicating authority* has accordingly held that in view of the above Circular wrongly debited amount i.e. CGST Rs.4,23,154/- and SGST Rs.4,23,154/- can't be refunded.



4. Being aggrieved with the 'impugned order' dated 04.06.2019, the "appellant" has filed the present appeal on 01.04.2021, i.e. after the delay of normal period prescribed under Section 107(1) of CGST Act, 2017. Accordingly, for the delay in filing of appeal, the "appellant" has submitted that -

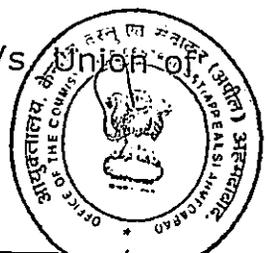
- The refund application applied manually and order issued by department manually.
- Due to non availability of appeal form online, which has been not available since long and now available from February - 2021.
- Online appeal is not accepted due to non availability of documents reference number which is generated by GST Portal and granted by GST Officer. Hence, filed appeal manually.

The 'appellant' has further submitted vide letter dated 31.03.2021 that the impugned order dated 04.06.2019 was received by them on 14.06.2019 and accordingly, appeal is being filed 553 days delayed from date of communication. In view of above, the "appellant" has requested to condone the delay.

5. The "appellant" has further stated in the appeal memo that they brought the contents of para 5 of CBIC Circular No. 94/13/2019-GST dated 28.03.2019 to the notice of department and it was submitted that they should be given opportunity to debit the amount of Rs.8,46,308/- from IGST Head of Electronic Credit Ledger through Form GST DRC-03 and said amount should be considered while sanctioning the provisional refund amount. However, without issuance of deficiency memo (Form RFD-03) the adjudicating authority has passed the impugned order.

6. The appellant has further referred the aforesaid Circular dated 28.03.2019, judgement of Hon'ble Supreme Court in case of Commissioner of Customs, Calcutta V/s. Indian Oil Corporation Ltd. [2004 (165) E.L.T. 257 (S.C.)] as well as Rule 88A of the CGST Rules, 2017 in their grounds of appeal. The 'appellant' has also referred following case laws :

- (1) Union of India V/s. Inter Continental (India) [2008 (226) E.L.T. 16 (S.C.)].
- (2) Delhi Chartered Accountant Society (Regd.) V/s Union of India



India [2013 (29) STR 461 (Del.)].  
(3) Commissioner of Central Excise, Bolpur V/s. Ratan  
Melting & Wire Industries [2008 (12) STR 416 (SC)].

7. Considering the above facts the 'appellant' has stated that refund of Rs.8,46,308/- has been rejected only on the basis of condition prescribed vide clause (b) of Para 3.2 of CBIC Circular No. 59/33/2018/-GST dated 04.09.2018, which is not supported by any statutory provision of law; that therefore, *impugned order* to the extent of rejection of refund of Rs.8,46,308/- is liable to be set aside on this ground alone.

**Personal Hearing :-**

8. Personal Hearing in the matter was through virtual mode held on 08.03.2022 wherein Shri Mehul Doshi, CA appeared on behalf of the 'appellant' as authorized representative to defend the case. During P.H. he has reiterated the written submission made till date and informed that nothing more to add into it.

**Discussion and Findings :-**

9. I have gone through the facts of the case, written submissions made by the 'appellant' and find that the present appeal is filed beyond the normal appeal period. 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.***

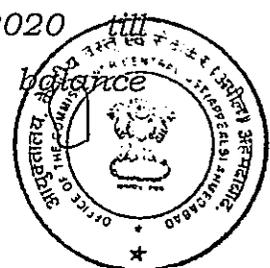
**10.** Accordingly, it is observed that the 'Appellant' was required to file appeal within 3 months from the communication of the said order i.e. on or before 13.09.2019, as stipulated under Section 107(1) of the Act. However, the 'Appellant' has filed the present appeal on 01.04.2021, i.e. after a period of more than one and half year from the due date. Further, I also find that in terms of the provisions of Section 107(4) *ibid*, the appellate authority has powers to condone delay of one month in filing of appeal, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown. Further, looking to the 'COD' application of 'Appellant' the present appeal if condoned for one month as per Section 107(4) *ibid*, the last date for filing of appeal comes to 13.10.2019. Accordingly, I find that there is a delay of almost one and half year in filing the appeal over and above the period of 4 months also. Thus, appeal filed beyond the time limit prescribed under Section 107(1) & (4) *ibid* cannot be entertained.

**11.** Further, I also find that in terms of the Hon'ble Supreme Court judgment dated 23.09.2021 in matter of Miscellaneous Application No. 665 of 2021, in SMW(C) No. 3 of 2020, wherein the Apex Court taking suo-moto cognizance of the situation arising due to COVID-19 pandemic has extended the period of limitation prescribed under the law with effect from 15.03.2020. The relevant para No. 8 (I) & (II) of said order is reproduced as under :

**8.** *Therefore, we dispose of the M.A. No. 665 of 2021 with the following directions:-*

**I.** *In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.*

**II.** *In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance*



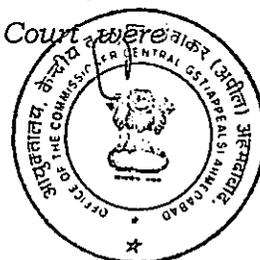
*period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.*

**12.** However, I find in the present case that the period of limitation of total 4 months (including condonable period of 1 month) for filing of appeal from the date of communication of *impugned order*, as prescribed under Section 107 of the CGST Act, 2017 was already completed on 13.10.2019 and hence, the present case would not be eligible for the relaxation/extension granted by the Hon'ble Supreme Court in respect of period(s) of limitation as mentioned above. 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.

**13.** 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*





By R.P.A.D.

To,

M/s. Royal Furnishers,  
411, Lilamani Corporate Heights,  
Opp. Ramapir Tekra, New Wadaj,  
Ahmedabad - 380013

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-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division - VII, Ahmedabad North.
- ✓ 5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File

