::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001

Tele Fax No. 0281 – 2477952/2441142 Email: commrappl3-cexamd@nic.in

रजिस्टर्ड डाक ए.डी. द्वारा :-   DIN-20210664SX00002126E3

क	अपील / फाइलसंख्या/ Appeal /File No.	मूलआदेशसं / OIONo.	दिनांक/ Date
	V2/102/RAJ/2020	GST/RFD-06/Div-01/2020	10.09.2020

ख अपील आदेश संख्या(Order-In-Appeal No.):

RAJ-EXCUS-000-APP-025-2021

आदेश का दिनांक / Date of Order:	**24.06.2021**	जारी करने की तारीख / Date of issue:	**25.06.2021**

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता** & प्रतिवादी का नाम एवं पता /Name & Address of the **Appellant** & Respondent :-

M/s. Bhagwati Trading Company 'Bhagwati Seeds', 203-Kesari Nandan Commercial Complex, Near Star Chamber, Harihar Chowk, Rajkot.

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.

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील,केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असार्वा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग , ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of dutydemand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित्त अधिनियम,1994की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) &9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissionerauthorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।/

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार कोपुनरीक्षण आवेदन :**
Revision application to Government of India:

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में,कैंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई,वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/

In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

In case of goods exported outsideIndia export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए है।/

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case,if the order covers variousnumbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। /

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /

For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER-IN-APPEAL ::

M/s Bhagwati Trading Company, Rajkot (*hereinafter referred to as* "Appellant") has filed Appeal No. V2/102/RAJ/2020 against Refund Order No. GST/RFD-06/Div-1/2020 dated 10.9.2020 (*hereinafter referred to as* 'impugned order') passed by the Deputy Commissioner, Central GST Rajkot-I Division (hereinafter referred to as "refund sanctioning authority").

2. The facts of the case, in brief, are that the Appellant was registered with GST Department having GSTIN No. 24AADFB0176B1Z7. They paid IGST amounting to Rs. 23,14,440/- in GSTR-3B for the month of November, 2017 on 25.12.2017 by debiting their electronic credit ledger. Subsequently, they filed refund claim in form GST-RFD-01 on 24.7.2020 for refund of IGST amount of Rs. 23,14,440/- under Section 54 of the CGST Act, 2017 (hereinafter referred to as "Act") on the grounds that they had paid said IGST in excess. The Appellant was issued notice for rejection of refund claim on 11.8.2020 on the grounds of limitation.

2.1 The refund sanctioning authority rejected the refund claim vide the impugned order on the grounds that the Appellant had made excess payment for the tax period November, 2017 on 25.12.2017 and relevant date for the purpose of claiming refund under Section 54 of the Act was 25.12.2017. Hence, they were required to file refund claim before expiry of two years from the relevant date i.e. on or before 24.12.2019 and since refund claim was filed on 24.7.2020, it was barred by limitation prescribed under Section 54 ibid.

3. Being aggrieved, the Appellant has preferred the present appeal on various grounds, *inter - alia*, as under:-

(i) The refund sanctioning authority erred in rejecting the refund claim on the ground of time barred. Actually, they had filed refund of the amount other than tax and not of tax therefore, provisions of Section 54 including relevant date is not applicable in the facts and circumstances of the case. Therefore, time limit of 2 years from the relevant date prescribed under Section 54 of the CGST Act, 2017 is not applicable.

(ii) There was no supply of goods on which IGST of Rs. 23,14,440/- was payable at all in the month of November, 2017. Actually, value of exempted supply of wheat was inadvertently shown in the column meant for "Integrated Tax" in column 3.1(b) - Outward taxable supplies (zero rated) instead of showing in column of Total Taxable Value in column 3.1

(c) – Other outward supplies (nil rated, exempted), which has resulted in excess payment of Rs. 23, 14,440/- under the head of Integrated Tax.

(iii) That supply of wheat valued at Rs. 23,14,440/- under total 7 invoices are exempted from payment of GST vide Sr. No. 65 of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017 as amended. As per explanation to Section 11 of the CGST Act, 2017, where an exemption in respect of any goods from whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods shall not collect the tax, in excess of the effective rate, on such supply of goods, which means the Appellant cannot supply wheat on payment of tax IGST or CGST & SGST.

(iv) That "Tax" is not defined anywhere in the CGST Act, 2017 or IGST Act, 2017 or rules framed there under. However, Section 5 of the IGST Act, 2017 and Section 9 of the CGST Act, 2017 uses the wordings "there shall be levied a tax called the integrated goods and services tax" and "there shall be levied a tax called the Central goods and services tax" respectively. "Central Tax" and "Integrated Tax" are defined under Section 2(21) of the CGST Act, 2017 as well as Section 2(2) of the IGST Act, 2017 and Section 2(58) of the CGST Act, 2017 as well as Section 2(12) of the IGST Act, 2017 respectively. Thus, there was neither supply of goods or services within the meaning of Section 7 of the CGST Act, 2017 read with Section 2(21) of the IGST Act, 2017 nor payment of "integrated Tax" and/or "output tax" nor "taxable supply" within the meaning of Section 2(58) of the CGST Act, 2017 as well as Section 2(12) of the IGST Act, 2017 read with Section 2(18) of the IGST Act, 2017 read with Section 2(108) of the CGST Act, 2017. That there was no determination of tax liability under the IGST Act, 2017 or CGST Act, 2017 at all, thereby no assessment within the meaning of Section 2(11) of the CGST Act, 2017.

(v) Since there was no inter-state supply of goods of any value and there was no assessment within the meaning of Section 2(11) of the CGST Act, 2017 inasmuch as no determination of tax liability of Rs. 23,14,440/- on any value of any supply whether inter-state or intra-state, the amount paid cannot take the colour of IGST or any other tax at all.

(vi) That as per Section 54(1) of the CGST Act, 2017, it has to be

considered as refund of any other amount paid by it and there is no relevant date defined in explanation (2) clause (a) to (g) under sub-section (14) of Section 54 of the CGST Act, 2017, for refund of any other amount. Clause (h) of Explanation 2 under sub-section (14) of Section 54 of the CGST Act, 2017, provides that "in any other case, the date of payment of tax". As submitted in para supra in the instant case there was no payment of tax but only excess amount was paid by mistake under the head of integrated tax. Therefore, time limit of two years mentioned in Section 54(1) ibid that one has to make an application before expiry of two years from the relevant date cannot be applied for refund of any other amount. Therefore, impugned order considering refund of any other amount as refund of IGST and time barred as same was filed beyond two years from the relevant date is beyond the provisions of Section 54(1) ibid.

(vii) Since the said amount is not tax nor any supply against the said payment shown under the head of IGST, incidence of tax cannot be passed on anybody but same was born by it only. This fact is also evident from the Certificate issued by the Chartered Accountant to the effect that incidence of tax has not been passed on anyone. Therefore, principle of unjust enrichment as envisaged under Section 54(5) is not applicable in the facts and circumstance of the case.

(viii) If the amount paid by them is to be considered as tax then also, as per Article 265 of the Constitution of India, same was not levied and collected under authority of law. Therefore, government cannot collect the said amount without authority of law. As per Article 265 of the Constitution of India not only levy of tax but collection of tax also must be under the authority of law. Thus, it is entitled for refund of amount collected without authority of law and relied upon following case laws:

a) Salonah Tea Company Ltd. Versus Superintendent Of Taxes, Nowgong & Ors. - 1988 (33) E.L.T. 249 (S.C.)
b) ITC Limited - 1993 (67) ELT 3 (SC)
c) Parijat Construction - 2018 (359) D.L.T. 113 (Bom.)
d) 3E Infotech - 2018 (18) G.S.T.L. 410 (Mad.)
e) Joshi Technologies International - 2016 (339) E.L.T. 21 (Guj.)
f) Oil and Natural Gas Corporation Ltd. - 2017 (354) ELT 577 (Guj.)

4. Personal hearing in the matter was conducted in virtual mode through video conferencing on 8.6.2021. Shri P.D. Rachchh, Advocate, appeared on behalf of the Appellant and reiterated the grounds of appeal and relied upon

case laws submitted as part of additional submission.

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal as well as additional submission. The issue to be decided in the present appeal is whether rejection of refund claim for an amount of Rs. 23,14,440/- in the impugned order on the ground of limitation under Section 54 of the Act is correct, legal and proper or not.

6. On perusal of the records, I find that the Appellant had made excess payment of IGST amounting to Rs. 23,14,440/-, while filing GSTR-3B for the month of November, 2017 on 25.12.2017. Subsequently, they filed refund claim under Section 54 of the Act. The refund sanctioning authority rejected the refund claim on the grounds that the relevant date for the purpose of claiming refund under Section 54 was 25.12.2017 but the Appellant filed refund claim on 24.7.2020, which was beyond two years from the relevant date and hence, it was barred by limitation prescribed under Section 54 ibid.

6.1 The Appellant has contended that they had supplied goods which were exempted from payment of tax but value of exempted goods was inadvertently shown in the column which was meant for integrated tax in GSTR-3B Return. Since there was no inter-state or intra-state supply of goods, the amount paid by them cannot take the colour of IGST or any other tax at all. Therefore, amount paid by them should be considered as refund of any other amount under Section 54(1) of the Act and there is no relevant date defined in explanation (2) clause (a) to (g) under sub-section (14) of Section 54 of the Act, for refund of any other amount. The appellant further contended that clause (h) of Explanation 2 ibid has prescribed date of payment of tax as relevant date for any other case not covered in clause (a) to (g) but in their case, there was no payment of tax but only excess amount was paid by mistake under the head of integrated tax. Therefore, time limit of two years prescribed in Section 54(1) ibid will not be applicable to their case and their refund claim is not barred by limitation.

7. I find it is pertinent to examine the relevant provisions contained in Section 54 of the Act, which are reproduced under:

> "SECTION 54. Refund of tax. — (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed :
>
> ...
>
> ...

Explanation. — For the purposes of this section, —

(1) ...
(2) "relevant date" means –

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods, —

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of —

(i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

[(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;]

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax."

7.1 On examining the facts of the case in backdrop of above legal provisions, I find that the Appellant had paid IGST of Rs. 23,14,440/- on 25.12.2017 and filed refund claim under Section 54 of the Act on 24.7.2020. They have admittedly covered the amount in question under 'Any other amount' appearing in Section

54(1) of the Act. Since, the refund claim was filed under Section 54 of the Act. it is natural that all the provisions of Section 54, including limitation prescribed therein, would be applicable to the said refund claim. The relevant date for the purpose of Section 54 of the Act has been defined under Explanation (2) under Section 54 of the Act. The Appellant's case is not covered under clause (a) to clause (g) and hence, clause (h) would be applicable which prescribes date of payment of tax as relevant date for cases other than listed in clause (a) to (g). On applying payment of tax as relevant date, which was 25.12.2017 in the present case, the Appellant was required to file refund claim before expiry of two years i.e. on or before 25.12.2019. Since the Appellant had filed refund claim on 24.7.2020, it was clearly barred by limitation as correctly held by the refund sanctioning authority. As regards contention of the Appellant that what was paid by them was not tax and hence, date of payment of tax would not be applicable to them, I find that when the Appellant had paid IGST of Rs. 23,14,440/- on 25.12.2017 by debiting from their electronic credit ledger, it was paid as 'tax' only. It was later realized by them that they had paid tax in excess. However, at the time of making debit entry in electronic credit ledger, it was towards payment of tax. Hence, date of payment of IGST has to be considered as relevant date for the purpose of determining limitation under Section 54 ibid. I rely on the Order passed by the Hon'ble CESTAT, Ahmedabad in the case of M/s Narmada Pipes reported as 2013 (292) E.L.T. 51 (Tri. - Ahmd.), wherein in identical facts, the Hon'ble Tribunal held that,

> "3. I have considered the submissions made by the learned Counsel and I find myself unable to be persuaded by the submissions. The Larger Bench of the Tribunal in the case of *BDH Industries Ltd.* (supra) has held that whether the payment is due to accounting error or whatever may be the reason, the debit entry in the accounts is only towards the payment of duty and therefore, refund of any amount which is debited in the accounts has to be treated as refund of duty only. Since the Larger Bench has decided that any debit entry made in the accounts towards payment of duty has to be treated as duty, the Refund Claim for the same has to be treated as a Refund Claim for duty paid. In view of these observations of the Larger Bench, the submission that the amount paid for the second time, is only a deposit and cannot be considered as duty, cannot be sustained. Since it is a decision of the Larger Bench of the Tribunal, the decision has to be applied to this case also and the Appeal is required to be rejected. ...
> ..."

(Emphasis supplied)

7.2 I also rely upon the Order passed by the Hon'ble CESTAT, Mumbai in the case of Benzy Tours & Travels Pvt. Ltd. reported as 2016 (43) S.T.R. 625 (Tri. - Mumbai), wherein it has been held that,

> "5. I have carefully considered the submissions made by both the sides. I find that the appellant have admittedly paid the service tax on Business Auxiliary Service even though such service was not leviable to service tax. However for the purpose of claiming refund of such amount of service tax, which was paid by the appellant, in the Central Excise Act Section 11B is only provision which deals with refund of any amount refundable to any person. Section 11B is applicable in the case of service tax matter by virtue of Section 83 of the Finance Act, 1994. In my view, since the amount claiming refund by the appellant can be refunded only under Section 11B, the limitation provided in the said Section shall also apply for sanction of refund. There is no other provision for refund of Service Tax/Excise duty except Section 11B of the Act, therefore limitation is applicable. It is the contention of the Ld. Counsel that if the service is not a taxable service the payment made is without authority of law, hence Section 11B is not applicable for refund of the such amount. In this regard, <u>I am of the view that in every case of refund the amount is refundable only where it is not payable and accordingly every such amount shall be treated as payment without authority of law, if this is accepted then Section 11B will stand redundant as in every refund matter Section 11B shall not apply for the reason that any amount which is refundable is neither the service tax nor excise duty and all such amount shall be deemed to be paid without authority of law. Therefore in my considered view, at the time of payment the assessee pays the amount under a particular head such as service tax, excise duty etc. and when subsequently it is found that this amount is not payable, the same amount stand refundable to the assessee and such refund is treated as refund of service tax/duty only. Therefore, the provision if any applies for refund of such duty is only provided under Section 11B and there is no any other provision. Therefore in my view, any amount which is to be refunded shall be refunded in accordance with Section 11B which include the condition of time limitation. ... ..."</u>

(Emphasis supplied)

7.3 I also rely upon the Order passed by the Hon'ble CESTAT, Mumbai in the case of State Bank of India reported as 2020 (34) G.S.T.L. 562 (Tri. - Mumbai). In the said case, the appellant therein had filed refund claim on the ground that they had paid excess service tax by mistake, which was otherwise not payable by

them. The refund claim was rejected on the ground of limitation. On an appea' the Hon'ble Tribunal has held that,

> "5. The facts are not under dispute that the appellant had filed refund application on 4-5-2011, claiming refund of service tax paid during the period 2007-08 and 2008-09; that the said application was filed under Section 11B of the Central Excise Act, 1944 made applicable to the service tax matters vide Section 83 of the Finance Act, 1994; and that the refund sanctioning authority had adjudicated the refund applications under the said statutory provisions. Section 11B ibid deals with the situation of claim of refund of duty (service tax). Clause (f) in explanation (B), appended to Section 11B ibid provides the relevant date for the purpose of computation of the limitation period for filing of the refund application. In the case of the present appellant, the relevant date should be considered as the date of payment of service tax. Section 11B ibid mandates that the refund application has to be filed before expiry of one year from the relevant date. In this case, it is an admitted fact on record that the refund application was filed by the appellant beyond the statutory time limitation prescribed under the statute. Therefore, the refund sanctioning authority adjudicating the refund issue under the statute has no option or scope to take a contrary view, than the limitation period prescribed in the statute, to decide the issue differently. In other words, when the wordings of Section 11B are clear and unambiguous, different interpretations cannot be placed by the authorities functioning under the statute and they are bound to obey the dictates/provisions contained therein."

(Emphasis supplied)

8. The Appellant has contended that if the amount paid by them is to be considered as tax then also as per Article 265 of the Constitution of India, same was not levied and collected under authority of law. Therefore, government cannot collect the said amount without authority of law. As per Article 265 of the Constitution of India, not only levy of tax but collection of tax also must be under the authority of law. Thus, they are entitled for refund of amount collected without authority of law and relied upon various case laws.

8.1 This appellate authority is a creature of statute and has to function within the ambit of the statute which has created it. So, when Section 54 of the CGST Act, 2017 has stipulated limitation for claiming refund under that Section, then such limitation is required to be followed. This appellate authority has no power to condone delay over and above limitation of two years prescribed under

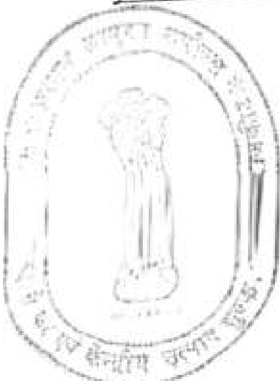
Section 54 of the Act. I rely on the judgment rendered by the Hon'ble Supreme Court in the case of Doaba Co-Operative Sugar Mills reported as 1988 (37) E.L.T. 478 (S.C.), wherein the Apex Court has held that,

> "6. It appears that where the duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed thereunder have no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light. But in making claims for refund before the departmental authority, an assessee is bound within four corners of the Statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act. If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the Act will prevail."

(Emphasis supplied)

8.2 I have examined the case laws of 3E infotech - 2018 (18) G.S.T.L. 410 (Mad.), Joshi Technologies International Ltd - 2016 (339) E.L.T. 21 (Guj.), Parijat Construction - 2018 (359) ELT 113 and Oil and Natural Gas Corporation Ltd. - 2017 (354) ELT 577 (Guj.) relied upon by the Appellant. I find that said decisions have been rendered by the Hon'ble High Courts by invoking powers vested under Article 226 of the Constitution of India in writ jurisdiction whereas this appellate authority is a creature of statute and has to function within the ambit of the statute which has created it and cannot assume powers and jurisdictions of constitutional courts such as the Hon'ble High Court. I, therefore, cannot condone delay in filing refund application, ignoring the limitation prescribed under Section 54 of the Act. My views are supported by the Order of the Larger Bench of the Hon'ble CESTAT, Chandigarh passed in the case of Veer Overseas Ltd. reported as 2018 (15) G.S.T.L. 59 (Tri. - LB), wherein it has been held that,

> "8. Here it is relevant to note that in various cases the High Courts and the Apex Court have allowed the claim of the parties for refund of money without applying the provisions of limitation under Section 11B by holding that the amount collected has no sanctity of law as the same is not a duty or a tax and accordingly the same should be returned to the party. We note such remedies provided by the High Courts and Apex Court are mainly by exercising powers under the Constitution, in writ jurisdiction. It is clear that neither the jurisdictional service tax authority nor the Tribunal has such constitutional



powers for allowing refund beyond the statutory time-limit prescribed by the law. Admittedly, the amount is paid as a tax, the refund has been claimed from the jurisdictional tax authorities and necessarily such tax authorities are bound by the law governing the collection as well as refund of any tax. There is no legal mandate to direct the tax authority to act beyond the statutory powers binding on them. The Hon'ble Supreme Court in *Mafatlal Industries Ltd.* (supra) categorically held that no claim for refund of any duty shall be entertained except in accordance with the provisions of the statute. Every claim for refund of excise duty can be made only under and in accordance with Section 11B in the forms provided by the Act.

(Emphasis supplied)

8.3 I have also examined the case laws of Salonah Tea Company Ltd. Versus Superintendent Of Taxes, Nowgong & Ors. - 1988 (33) E.L.T. 249 (S.C.) and ITC Limited - 1993 (67) ELT 3 (SC). In both cases, the Appellants came to know that they were not required to pay tax on the basis of judgments rendered in other party's case. The Appellants had filed refund claims, which were rejected on the ground of limitation. The Hon'ble Supreme Court held that where tax or money has been realized without the authority of law, the same should be refunded to the party and that the Court has power to direct for refund under Article 226 of the Constitution. However, as discussed above, this appellate authority is bound by the provisions contained in CGST Act, 2017 and has to adhere to the limitation prescribed in the Act, as held by the Hon'ble Supreme Court in the case of Doaba Co-Operative Sugar Mills cited *supra*. Hence, this appellate authority cannot condone delay in filing refund claim over and above 2 years prescribed under Section 54 ibid.

9. The Appellant has contended that principle of unjust enrichment as envisaged under Section 54(5) is not applicable to their case, since the said amount paid by them was not tax nor against any supply and hence, incidence of tax cannot be passed to anybody but the same was born by it only as evident from the Certificate issued by the Chartered Accountant to that effect. Since, the refund claim is not sustainable on limitation, as held by me above, I do not find it necessary to examine whether doctrine of unjust enrichment is applicable or not. I, therefore, discard this contention.

10. In view of above discussion and findings, I hold that the refund claim filed beyond limitation prescribed under Section 54 of the Act is not maintainable and correctly rejected by the refund sanctioning authority as barred by limitation.

11. In view of above, I uphold the impugned order and reject the appeal.

12. अपीलकर्ता द्वारा दर्ज की गई अपीलका निपटारा उपरोक्त तरीके से किया जाता है।

12. The appeal filed by the Appellant is disposed off as above.

सत्यापित,

विपुल शाह
अधीक्षक (अपील)

(AKHILESH KUMAR)
Commissioner (Appeals)

By Regd Post A.D.

To, M/s Bhagwati Trading Company 'Bhagwati Seeds', 203- Kesari Nandan Commercial Complex, Near Star Chamber, Harihar Chowk, Rajkot.	सेवा में, मे॰ भगवती ट्रेडिंग कंपनी 'भगवती सीड्स', 203- केसरी नंदन वाणिज्यिक परिसर, स्टार चैंबर के पास, हरिहर चौक, राजकोट.

प्रतिलिपि :-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-I मण्डल, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।