

वस्तुऔरसेवाकरएवंकेंद्रीयउत्पादशुल्कआयुक्तकाकार्यालयअपील)-II)  
OFFICE OF THE COMMISSIONER OF GST & CENTRAL EXCISE (APPEALS-II),

न्यूरीटावर्स,दूसरातल, सं2054./I, II एवेन्यू, 12वांमेनरोड  
NEWRY TOWERS, 2<sup>ND</sup> FLOOR, No.2054/I, II AVENUE, 12<sup>TH</sup> MAIN ROAD,

अन्नानगर2871 2614.चेन्नई-६०००४०, फ़ोनन,  
ANNA NAGAR, CHENNAI – 600 040- Phone No.26142871

DIN

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अपीलआदेशसं. 294 /2024 (मा.से.क.अ-1)(अ.आ (.दिनांक 10 .10 .2024

ORDER-IN-APPEAL NO. 294 / 2024(GSTA-II)(JC) dated 10 .10.2024

Passed by: RATNA KUMAR MATUR, IRS, Additional Commissioner of GST (Appeals-II)

प्रस्तावना/ P R E A M B L E

1. जिसव्यक्तिकोयहप्रतिजारीकीजातीहै, उसव्यक्तिकेनिजीउपयोगकेलिए:शुल्कदीजातीहै।  
This copy is granted free of cost for the private use of the person to whom it is issued.
2. इसआदेशसेव्यक्तिकोईकरनिर्धारितकेन्द्रीयमालऔरसेवाकरअधिनियम,  
2017कीधारा 109केअनुसारकिसीअपीलीयअधिकरणकेसमक्षकेन्द्रीयमालऔरसेवाकरअधिनियम,2017 कीधारा 112केअध्यक्षीनअपीलदायकरकरसकताहै।  
Any assessee aggrieved by this order may file an appeal under Section 112 of the CGST Act, 2017 to the Goods and Service Tax Appellate Tribunal constituted under Section 109 of the CGST Act, 2017.
3. जोव्यक्तिउपरोक्तधारा 2 मेंसंदर्भितअपीलदायकरकरनाचाहताहै, वहउक्तआदेशकेसूचितहोनेकीतारीखसेतीनमहीनेकेअंदरअपेक्षितशुल्ककेसाथनिर्धारितप्रपत्रमेंअपीलकरें।  
The appeal, as referred to in Para 2 above, should be filed in such form as may be prescribed alongwith requisite fees 9
  - i. the date on which the order sought to be appealed against is communicated to the person preferring the appeal or
  - ii. the date on which the President or the State President as the case may be of the Appellate Tribunal after its constitution under Section 109, enters office. in terms of Removal of Difficulty Order No.09/2019-Central Tax dated 03.12.2019 issued by CBIC.
4. केन्द्रीयमालऔरसेवाकरअधिनियम,2017 मेंसमाविष्टउपबंधितथातदधीनवनाएगएनियमोंकीऔरध्यानआकर्षितकियाजाताहै, जोइन्हेंतथाअन्यसंबंधितमामलोंकोविनियमितकरतेहैं।  
Attention is invited to the provisions governing these and other related matters, contained in the CGST Act, 2017 and the Rules made thereunder.
5. धारा 112 (1) केअनुसारअपीलदायकरनहींकीजाएगी, जबतकअपीलकर्ताद्वारा-  
No appeal shall be filed under Section 112(1), unless the Appellant has paid -
  - a. आर्सेपितआदेशसंबंधितकर, व्याज, जुर्माना, शुल्कएवंदंडकीराशिकेउसअंगका, जिसेउसनेस्वीकारकियाहै, भुगताननहींकियागयाहो, और  
in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
  - (b) टायरकीगईअपीलकेसंबंधमें, उक्तआदेशसेउद्भूतधारा 107कीउपधारा (6)केअनुसारभुगतानकी  
गईराशिअनुसारवादादितकरकीशेषराशिके20% कीसमतुल्यराशिभुगताननहींकियागयाहो।  
a sum equal to twenty percent, of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of Section 107, arising from the said order, in relation to which the appeal has been filed.

Form GST APL – 04

[See rules 113(1) & 115]

Summary of the demand after issue of order by the Appellate Authority, Tribunal or Court

Order No.: 294 /2024 (GSTA-II) (JC) Date of Order: 10 .10.2024

1	GSTIN/ Temporary ID/UIN	33ADLFS8698A1ZO
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2	Name of the Appellant	M/s. S V Infrastructure
3	Address of the Appellant	NO.24, Karpagam Gardens, 18 <sup>th</sup> Main Road, Adyar, Chennai 600 020.
4	Order appealed against	Order in Original No.71/2024 – GST(AC) dated 26.06.2024
5	Appeal No.	A.No.529/2024/GSTA-II/ADC/CS, Dated 16-07-2024
6	Personal Hearing	19.09.2024
7	Order in brief	Rejection of refund claim filed against the supply of services to SEZ units
8	Status of order	Appeal allowed

Particulars	Central tax		State/UT tax		Integrated tax		Cess		Total	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11
Tax	1,91,94,291	0	1,91,94,291	NA	NA	NA	NA	NA	1,91,94,291	0
Interest	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Penalty	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Fees	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Others	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Refund	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Place: Chennai

Date: 10/10/2024

Appeal No. A.No.529/2024/GSTA-II/ADC/CS, Dated 16-07-2024, is filed M/s. S V Infrastructure, (Appellant) against Order in Original No.71/2024 – GST(AC) dated 26.06.2024 (impugned order) passed by the AC, Adyar Division, Chennai-South Commissionerate (Central Tax) (Lower Adjudicating Authority/LAA/ Respondent), has



confirmed the following demands:

1. Rejecting the refund claim of Rs.3,83,88,582/- filed vide RFD-01 with ARN AA330524073414F dated 23.05.2024.

**I. Brief facts of the case:**

1. M/s S V Infrastructure, (GSTN 33ADLFS8698AIZO), 24, Karpagam Gardens, 18th Main Road, Adyar, Chennai - 600 020 (**hereinafter referred to as 'SVI or the Appellant'**), was supplying services to the SEZ falling under SAC Code 9983 filed a Refund Application under with Under Section 54 of CGST Act, 2017 read with rule 89 of CGST Rules, 2017, vide ARN AA330524073414F dated 29.02.2024 for Rs.3.83,88,582/- claiming a refund towards un utilised input credit on account of supplies made to SEZ unit/ SEZ Developer, which is a zero-rated supply in terms of Section 16 of the IGST Act,2017.
2. The Appellant has received a deficiency memo from the Lower Adjudicating Authority (**hereinafter referred to as 'LAA or the Respondent'**) dated 11.03.2024 and the reply to the deficiency memo was filed by the appellant on 17.05.2024 in physical form to the Respondent, the same was filed online on 23.05.2024.
3. Subsequently a Show Cause Notice dated 10.06.2024 was received on 11.06.2024 with the personal hearing opportunity given on 20.06.2024.
4. It is submitted that the Appellant has submitted an invoice raised against the customer M/s. Gateway Office Parks P Ltd, inadvertently omitted the Word Annexure B while filing the refund application online and therefore enclosed the same with the Word Annexure B. They have also stated that details of payment are given in the 'DTA Service Procurement Form' dated 28.07.2020 filed by their customer M/s. Gateway Office Parks P Ltd. and they have already filed it online. They also stated that they have enclosed the same with the written reply.
5. Further, the Appellant has submitted that they have filed the 'Refund Application RFD-01' on the last day of making the Refund Application on 29.02.2024 vide ARN. AA330224108198J. They have stated that the department had extended the time limit



- to 29.02.2024 for filing of Refund claim vide Notfn. No.13/2022-cr dated 05.07.2022 owing to the Covid-19 pandemic. Hence going by the said notification, they have stated that they are well within the prescribed time limit for filing the refund claim.
6. The notice was adjudicated vide Order – in – Original No.71/2024 Dated 26.06.2024 by the Assistant Commissioner of GST And Central Excise, Adyar Division, Chennai South Commissionerate (The Respondent) rejecting the refund claim on the ground of Time bar.
7. Aggrieved by the order of the Respondent dated 26.06.2024, the Appellant prefers the present appeal.

## II. Grounds of Appeal:

At the outset, the Appellant wishes to submit that the Respondent, in the order has failed to decide the issue on merits even after the representation along with a detailed reply from the Appellant's side. The order was passed mechanically accepting the proposals of the Show Cause Notice. The Appellant prefers this Appeal against the Order in Original No.71/2024-GST (AC) dated 26.06.2024 passed by the Respondent on the following grounds.

- i. The Appellant submits that the refund claim was filed under Section 54 of CGST Act, 2017 through the GST online portal in Form GST RFD-01A on 29.02.2024. On submission of the refund claim, ARN AA330524073414F dated 29.02.2024 was generated in the GST common portal
- ii. The Appellant submits that thereafter, received a deficiency memo issued on 11.03.2024 by the Respondent in form GST RFD -03 and against the deficiency memo the appellant has filed a reply on 17.05.2024 in a physical to the Respondent. The same was filed online on 23.05.2024 along with RFD- 01. It is pertinent to mention that there is no acknowledgement was issued by the jurisdictional proper officer, though acknowledgement was required to be given in Form GST RFD-02 within 15 days after scrutiny of the application for its completeness, as per Rule 90(3)



- of CGST Rules, 2017.
- iii. The Appellant submits that the Show Cause Notice dated 10.06.2024 was received on 11.06.2024 and a Personal Hearing date was given on 20.06.2024.
  - iv. The Appellant submitted a written submission at the time of the Personal Hearing that they submitted the invoice raised on their customer M/s. Gateway Office Parks P Ltd and inadvertently omitted the word Annexure-B while filing a refund application online and therefore enclosing the same with the Word Annexure - B. They have also stated that details of payment are given in 'DTA Service Procurement Form' dated 28.07.2020 filed by their customer M/s. Gateway Office Parks P Ltd., and they have already filed it online.
  - v. The Appellant further submitted that they have filed the 'Refund Application RFD - 01 on 29.02.2024 vide ARN. AA330224108198J. They have argued that the department had extended the time limit to 29.02.2024 for filing a Refund claim vide Notfn No.13/2022-CT dated 05.07.2022 owing to the COVID-19 pandemic. Hence going by the said notification, they have stated that they are well within the prescribed time limit for filing the refund claim.
  - vi. The Appellant further stated that after the department issued a deficiency memo on 11.03.2024, they filed RFD-01 again on 23.05.2024 since there was no provision for filing an online reply to the deficiency memo.

Non-Submission of Annexure - B

- vii. *The Appellant submits that in para 6.6 of the Order in Original it was mentioned that the Appellant has not submitted for Annexure B (Details of the purchase invoices which accumulated credit occurred). The appellant submitted the details but did not mention them as Annexure B. It is pertinent to mention that it is within the ambit of the Jurisdictional officer who could have put some effort into calling for the documents. There are only 3 purchase invoices which can be verified by the Lower Adjudicating Authority in a few minutes which was not done by them and the order was passed mechanically. It is discernibly clear that the jurisdictional proper officer has not processed the refund claim and created a frantic situation for the Appellant.*

**Fresh refund claim application RFD-01 vide ARN AA330524073414F is time-barred**

1. In terms of Rule 90(3), the date of filing of the refund application after making good the deficiencies pointed out in the deficiency memo shall be considered as the date of filing of the refund claim, by treating this resubmitted application as a 'fresh refund application'.
2. The date of filing of the resubmitted refund claim shall be within two years from the 'relevant date' as specified under subsection (1) of Section 54. The said two-year



period from the 'relevant date' shall not include the period between the date of filing of the first refund claim till the date of communication of the deficiency memo.

Rule 90(3) is reproduced below.

3. Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in **FORM GST RFD-03** through the common portal electronically, requiring him to file a fresh refund application after the rectification of such deficiencies.
4. [Provided that the time period, from the date of filing of the refund claim in **FORM GST RFD-01** till the date of communication of the deficiencies in **FORM GST RFD-03** by the proper officer shall be excluded from the period of two years as specified under subsection (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.]
5. The Appellant submits that CBIC vide Circular No.124/44/2019-GST dated 18.11.2019 clarified that the date of filing of the fresh application shall be considered as the date of filing of refund application for computing the two-year limitation period from the 'relevant date' stipulated in Explanation(2) of Section 54 of the CGST/TNGST Act,2017. The relevant extract of the Circular No 125/44/2019-GST dated 18th November 2019 is as under:

*"deficiency memo gets issued in respect of any refund application, then the resubmitted refund application, after correction of deficiencies, shall be treated as fresh refund application and it is also clarified that since a refund application filed after correction of deficiency is treated as a fresh refund application, such a rectified refund application, submitted after correction of deficiencies, shall also have to be submitted within 2 years of the relevant date , as defined in the explanation after sub-section (14) of section 54 of the CGST Act."*

6. In the instant case, the 'relevant date' for filing the refund claim is the due date for furnishing of return under section 39 in respect of such supplies in terms of Explanation (2)(ba) of Section 54 ibid.
7. Therefore, the appellant submits that the due date for filing the GSTR3B returns for the refund period is JULY 2020 and therefore, the relevant date is 20.08.2020. Hence, the refund claim filed on 28.02.2024 after making good the deficiencies, has been filed within two years from the relevant date of 20.08.2020 (filing of GSTR3B ) after excluding the period between the date of filing of the refund claim first time i.e 28.02.2024 till the date of communication of the deficiency memo i.e.11.03.2024.
8. The Appellant submits that the respondent shall be directed not to deny the refund



claim on limitation factor, by taking into account, the date of submission of the documents on 23.05.2024 and conclude with the reason for denial as 'documents filed belatedly from the relevant date'.

### 3. PERSONAL HEARING:

Mr.C.Bosco, Advocate, the authorized representative has appeared for personal hearing on 19.09.2024 and orally reiterates their grounds of appeal filing additional written submissions for kind consideration.

W.r.t rejection of refund on time bar, by the respondent in the impugned order, appeal is filed on the grounds that;

- Two years limit is available for filing refund.
- Annexure B filed, which is not as per prescribes format for which deficiency memo issued.

The above submissions may be taken on record and may pass favorable order.

### 4. DISCUSSION AND FINDINGS:

4.1 I have gone through the facts of the case, submissions made by the appellant, record of personal hearing, and on careful consideration of all the materials at disposal, I put forth my observations;

4.2 In this instant case, I would like to state that the department had extended the time limit to 29.02.2024 for filing a Refund claim vide Notfn No.13/2022-CT dated 05.07.2022 owing to the COVID-19 pandemic which is stated below;

*"G.S.R.....(E).— In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021, the Government, on the recommendations of the Council, hereby,-*

*(i) extends the time limit specified under sub-section (10) of section 73 for issuance of order under subsection (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, up to the 30th day of September, 2023;*



(ii) excludes the period from the 1 st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of order under subsection (9) of section 73 of the said Act, for recovery of erroneous refund;

(iii) excludes the period from the 1 st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act. 2. This notification shall be deemed to have come into force with effect from the 1st day of March, 2020”

4.3 Hence ,going by the said notification stated supra, it clearly shows that the appellant is well within the prescribed time limit for filing the refund as the appellant had filed the 'Refund Application RFD - 01 on 29.02.2024 vide ARN. AA330224108198J, which is the last day of the two year time limitation for filing refund claim.

4.6 Moreover, as Section 54(1) stipulates the time period of two years from the relevant date within which period, the refund claim shall be filed and not in terms of many days, the year 2024 being a leap year, the two years period culminates on 29.02.2024 from the relevant date of 01.03.2022. As, the appellant had filed the first refund claim ,on the last date i.e.29.02.2024, which shows that it has been filed within two years time limitation as contemplated in Section 54 .

4.7 In support of the above case, I would like to reinstate the judgment passed by the Honourable High Court of Madras in the order given in the case of M/S LENOVO (INDIA) PVT. LTD. VS. THE JOINT COMMISSIONER OF GST (APPEALS – I) & OTHERS (WRIT PET NOS. – 23604, 23605 AND 23607 OF 2022) held that Section 54 (1) of CGST Act would make it clear that the assesses can make the application within two years. The terms used in said Section” may make an application before two years from the relevant date in such form and manner as may be prescribed”, which means that the assesses may make an application within two years and it is not mandatory that the application has to be made within two years and in appropriate cases, refund application can be made even beyond two years. The time limit fixed under Section 54 (1) is directory in nature and it is not mandatory. Therefore, even if the application is filed beyond the period of two years, the legitimate claim of refund by the assesses cannot be denied in appropriate cases.

On the above lines of discussion and findings, I proceed to set aside the impugned order passed by the respondent and allow the appeal filed by the appellant for sanction of





refund.

4.13 Accordingly, I pass the following order;

**ORDER**

5. Appeal is allowed.

Signed by Matur Ratna  
Kumar

(DATE 10/10/2024 12:40:52)

ADDITIONAL COMMISSIONER (APPEALS-II)

To

M/s. SV Infrastructure,

NO.24, Karpagam Gardens,

18<sup>th</sup> Main Road, Adyar,

Chennai- 600 020.

**[BY SPEED POST]**

1. The Deputy/Assistant Commissioner, Adyar Division, Chennai-South Commissionerate.

Copy for information to:

1. The Commissioner of GST & Central Excise, Chennai South Commissionerate.
2. The Commissioner, State GST 4<sup>th</sup> floor.  
Ezhilagam Building, Kamarajar Road, Chepauk, Chennai-600005.
3. Guard File.

