

 सत्यमेव जयते	<b>RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX</b>  <b>NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN)</b> <b>Email : aaarjpr@gmail.com</b>	
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Proceedings under Section 101 of the Central GST Act, 2017 read with Rajasthan GST Act, 2017

Before the Bench of

1. Sh. Pramod Kumar Singh, Member (Central Tax)
2. Sh. Abhishek Bhagotia, Member (State Tax)

**ORDER NO. RAJ/AAAR/04/2020-21 DATED 12.12.2020**

Name and address of the Appellant	:	Sunil Kumar Gehlot (Sunil Kumar & Co.), Water Works Road, Sojat City, District-Pali, Rajasthan 306104
GSTIN of the appellant	:	08AAUHS7425M1Z6
Issues under Appeal	:	(a)Classification of any goods or services or both;
Date of Personal Hearing	:	03.12.2020
Present for the appellant	:	Sh S. Sunil, Advocate
Details of Appeal	:	Appeal No. RAJ/AAAR/APP/04/2020-21 against Advance Ruling No. RAJ/AAR/2020-21/01 dated 06.05.2020

**(Proceedings under section 101 of the Central GST Act, 2017 read with section 101 of the Rajasthan GST Act, 2017)**

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to the same provisions under Rajasthan GST Act, 2017.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (**hereinafter also referred to as 'the CGST Act'**) read with Section 100 of the Rajasthan GST Act, 2017(**hereinafter also referred to as 'the RGST Act'**) by M/s Sunil Kumar Gehlot (Trade Name Sunil Kumar & Co.) Sojat City, Distt, Pali-306104 (**hereinafter also referred to as 'the Appellant'**) against the Advance Ruling No. RAJ/AAR/2020-21/01 dated 06.05.2020.

**BRIEF FACTS OF THE CASE**

3. M/s Sh. Sunil Kumar Gehlot (Trade name Sunil Kumar & Co.) (hereinafter refer to as Appellant) is registered with the GST department for manufacture of hair





dye powder and is having GST Registration Number 08AAUHS7425MIZ6 and intends to manufacture Mehendi/Henna powder in future, therefore, Appellant filed an application for Advance Ruling before the Rajasthan Authority for Advance Ruling (hereinafter referred to as AAR) seeking clarification whether henna is classifiable under chapter 14 or 33 of GST Tariff?

3.1 AAR has observed that Henna/Mehendi powder has a natural property of dye/tanning and is generally used as hair dye and issued ruling vide their order dated 06.05.2020 that Mehendi /Henna powder is covered under Chapter 33 and will attract GST @18% (CGST 9% + SGST 9%).

4. Aggrieved by the Ruling above, the Appellant has preferred the present appeal before this forum. The Appellant has filed appeal on line on 17.06.2020. The Appellant has deposited SGST fee of Rs. 10000/- on 15.06.2020 and CGST fee of Rs. 10000/- on 22.10.2020 and submitted hard copy of appeal on 28.10.2020. On perusal of appeal it was found that the appellant has not filed the appeal in prescribed format, therefore, a letter dated 29.10.2020 has been issued to the appellant to file the appeal in prescribed format. The appellant filed the appeal in prescribed format on 02.11.2020. The Appellant has also filed misc application for condonation of delay. The Appellant in its appeal has, interalia, mentioned the following grounds of appeal.

- (i) That the learned AAR while ruling the classification of the product has failed to understand the basic nature and characteristic and usage of the 'Henna powder in pure form. The leaves of mehendi are obtained from a shrub (Plant) and powder or paste of these leaves gives brownish red colour. It is used to beautify the hands and feet by woman of community on all cultural, marriage and festive functions. The use of henna (powder or paste) on the hands and feet by women in India is prevalent since times immemorial and it is a common man's knowledge that 'mehandi' is used by women on all auspicious occasion on their hands and feet and since ancient times on their hands and feet and since ancient times it is considered as a symbol of their Suhag and Shagun. Henna/Mehandi is an organic orange red dye and when applied on hands and feet leaves a pleasant red colour on hands and feet of women and red colour is considered very auspicious in Indian mythology. Henna is a vegetable product and henna leaves and henna powder are bound to contain natural organic dyes and no extraneous dye is mixed while making henna powder from henna leaves. The natural henna leaves in dried form are purchased by the manufacturers from agriculturists of henna leaves (henna leaves are essentially an agriculture produce obtained from plants) and such leaves are grinded in to powder through grinders. Apart from this there is no other process whatsoever involved in the conversion of said henna leaves in to powder. In this process of making powder there is no change in the characteristics except that the leaf gets into powdery form. This pure henna powder is called *henna powder not mixed with any other ingredient*. The pure henna powder so obtained is sold by the manufacturers in the market both bulk as well as unit packings. The product is sold in both the packing for the general use of application on hands and feet by women on festive and auspicious occasions. Henna powder which is sold with absolutely no indication of its use as hair dye or an application for use on hair. It is to be noted that conversion of henna natural leaves (agricultural produce) into powder form is a simple process of grinding. The natural leaves which are powdered with the grinder





without involving any other process do not change the characteristics and nature of henna leaf. The process of grinding does not involve any preparation. The appellant's submission was that the entry "Henna" rightly continues in the Departmental Publication. The learned AAR has totally misinterpreted the amendment made vide Finance Act, 2006. In the amendments carried out in the Customs Tariff Act and Central Excise Act, it has been clearly stated that in the heading 1404, sub-headings and the entries relating thereto have been omitted. The whole heading has not been deleted. It is for this reason "Henna" continued to remain in the main heading of the Tariff. A bare reading of the Heading of Chapter 14 of the Tariff indicates that, both prior to as well as after 2006, it covered products "not elsewhere specified or included". "Henna Powder" specifically having been included in Chapter 14 (under TH 1404 thereof) and, therefore, it is clear that the said Henna Powder is not includible anywhere else in the Tariff. This position remained unchanged. There has been no amendment in any other provision in the Tariff (both Customs and erstwhile Central Excise Tariff) as could justify bringing Henna Powder within the fold thereof, even after 2006. It is well settled that, where the item finds specific mention in a particular Tariff entry, it has to be classified therein and cannot be relegated to any other Tariff entry [Ref: Rule 3 of Rules for the interpretation of Schedule to the Tariff]. Henna is undisputedly classifiable only under TH1404 of the Tariff and cannot be relegated to any other entry therein including TH 3304 and 3305. TH 3304, for its part, covers "beauty or make up preparation and preparations for the care of the skin (other than medicaments), including sunscreen or suntan preparations; manicure or pedicure preparations." In the context of tax law, preparation has a distinct connotation, as an element of change in character of the product or putting in an effort to change the essential nature is necessary for a process of preparation to be said to take place. One must, therefore, prepare one item from another in order for there to be said to be "Preparation". In the case of henna powder made by the manufacturers of pure henna powder (not mixed with any other ingredient), no such element of preparation can be said to exist, in as much as all that is done is powdering or grinding of dried henna leaves. There being, therefore, no process of "preparation" involved. Henna powder not mixed with any other ingredient i.e. pure henna powder cannot be regarded as a 'preparation' in any event. Therefore, since it is not a preparation, the applicability of Chapter 33 cannot be invoked at all, as to invoke it the product has to be necessarily a preparation which henna powder pure is not – hence the classification cannot be brought in Chapter 33 at all.

- (ii) THAT from the notifications issued by the Government after introduction of GST, the Customs Tariff has been adopted for descriptive classification of goods under GST. One of the reasons for adopting Customs Tariff is that IGST is leviable on the imported goods and for the said purpose one has to refer to the Customs Tariff. Customs Tariff is based on Harmonised System of Nomenclature (HSN). In the HSN, Henna Powder is included under Chapter 14, signifying that henna powder as vegetable product is included in Chapter 14 (HSN) and it is a settled law that while deciding the dispute of classification of a product, HSN and its explanatory notes should be referred to since the scheme of Customs Tariff is based by (HSN) and explanatory notes to HSN. Explanatory notes provide a safeguard for interpretation with regard to classification of an entry in the Customs Tariff. In view of the fact that 'Henna powder' is classified under Chapter 14 of (HSN) and explanatory notes thereto, it would merit classification only under Chapter 14 of Central Excise tariff. By placing





reliance upon the HSN and its explanatory notes, the classification of henna powder can fall only under Chapter 14 and nowhere else.

- (iii) THAT after introduction of the GST, manufacturers of Henna Powder and paste got themselves registered under GST. The registration was done on-line in the GST website – gst.gov.in. In the process of registration in the website, an option was asked from the assessee to provide the name of the finished product which they intend to supply. Once the said product was entered, the next option available to the assessee on the screen was to find out the HSN Code for the opted goods. Accordingly, whenever the assessee inserted the name of their finished product as Henna leaves and Henna powder after providing the said details, HSN code 1404 1011 was generated for Henna leaves and 1404 1019 for Henna powder. Therefore, 'henna powder' is undoubtedly classifiable under Chapter 14 under Tariff Heading 1404.
- (iv) THAT the Members of the Association had been clearing the products 'Henna Powder' at a GST rate of 5% treating it as Vegetable products not elsewhere specified or included, falling under Chapter 14 of the GST Tariff.
- (v) THAT Notification 6/2018 *supra*, introduces a specific description by name 'Mehandi paste in cones' under TH 1404. According to the said Notification, the said goods having a description 'Mehandi paste in cones' shall be eligible to Central Tax Rate of 2.5%. The goods with said description have been treated as Schedule I items. An interesting feature of the amendment carried out in Notification 6/2018 *supra* is that 'Mehandi paste in cones', have been referred to as the products falling under TH 1404 and also 3305. It is inconceivable that how the product having a specific name can fall under two Tariff Headings.
- (vi) THAT right from the introduction of the GST law w.e.f 1.7.2017, pure henna powder manufactured traders are filing their regular returns till date declaring henna powder under Chapter 14 under HSN code No 1404 1019 and paying duty @ 5% as applicable under the rule on their chapter. Their returns filed have been duly accepted and assessments in some cases have already been completed. No objection to the classification of henna powder under Chapter 14 and under HSN code 1404 1019 and duty @ 5% has ever been raised by the department and ever communicated to the concerned parties. Henna powder has been cleared by every party classifying it under Chapter 14 and charging GST @ 5% from the purchasers since there as never a dispute about its classification and duty leviable on it. Pure henna powder (not mixed with any other ingredient) and which is not sold by the manufacturers with any indication of its use as preparation for hair will be appropriately classifiable under Chapter 14 ad tax payable @ 5%.
- (vii) THAT if any manufacturer of pure henna powder (not mixed with any other ingredient) is selling henna powder with an indication or intention to be used as a preparation for hair dye, then the said powder would merit classification under Chapter 3305 and tax at the rate of 18%. The law is very clear on this point and the department while deciding classification of henna powder should note this very necessary and legal distinction. This will separate the wheat from the chaff i.e differentiate between henna powder sold for its predominant use i.e. for application on hand and feet by women and henna powder sold as preparation for use on hair. This strict test should be applied while deciding the classification of henna powder instead of treating every henna powder as a preparation for use





on hair and classifying it compulsorily and wrongly under chapter 3305 and asking for duty @ 18%. While perusing the sub-heading of chapter 3305, one will find that this chapter deals with preparation which are exclusively used on hair and under this heading no specific sub-heading provides the entry as henna/mehandi powder under GST laws. On the other hand henna powder as mentioned specifically in the registration certificate issued by the department to the henna manufacturers, henna powder is clearly included under chapter 14 sub-heading 1404 1019 "vegetable products not elsewhere specified or included. If the manufacturer is selling 'henna powder' with a clear indication on the packet 'preparation for use on hair, the product may fall under TH 3305. A general view cannot be adopted by the department regarding henna powder as hair dye, since it is an organic nature dye used since ancient time by women for applying on their hands and feet on auspicious occasions. It is a settled law that with regard to the classification of goods and matter relating to the chargeability, the burden is heavily cast upon the revenue which has to prove its case with positive evidence. Therefore, in the case of henna powder, the department while proposing to include its classification under chapter heading 3305 will have to prove beyond doubt that such henna powder (not mixed with any other ingredient) is specifically meant for use on hair and is a preparation. Hence leaf is an agriculture produce obtained from the shrub/plant of henna/mehandi and is an organic natural brown dye, used predominantly since time immemorial by the women to apply on their hands and feet on festive and ceremonial occasions. Therefore, the pure henna powder is not a preparation for use on hair to include it as such under chapter 3305. To come under Chapter 3305, it should be sold with an intention and indication that the product is meant for hair application and is a preparation.

- (viii) That in the matter of classification of 'henna powder' one may usefully refer to the case of Madan Lal Rajinder Prashad of Punjab & Haryana High Court. In the year 2006 by means of Notification 4/2006-CE dated 1.3.2006, the department proposed to impose duty @ 8% *ad valorem* on henna powder (not mixed with any other ingredient i.e. pure henna powder) vide Sr. No. 66 of the table annexed thereto. This notification was successfully challenged before the Punjab & Haryana High Court by the henna manufacturer of Faridabad M/s Madan Lal Rajinder Prashad. This case was decided in view of reply and clarification given by the department regarding clarification of henna products. ***In the short reply the department admitted that henna powder which is not intended to be sold as preparation for use on hair would merit classification under chapter 1404 1019 and if it is sold with the intention or is intended to be a preparation for use on hair then it would merit classification under chapter 3305 and as per the impugned notification duty @ 8% ad valorem would be levied on this henna powder.*** Chapter heading 3305 inter alia covers to include preparation for use on hair. It was further opined in the short reply of the department since henna powder is usable as a preparation for use on the hair and it is so indicated in the literature or documents and there is no doubt about the intention as such, such henna powder would be classified under chapter 3305. The classification of a product is dependent on its use. Under the law it is the duty of the manufacturer to indicate the uses of the product. It was clearly stated in the short reply by the department that "there has been no mistake in notification No 4/2006-CE issued by the Govt. classifying henna powder not mixed with any other ingredient under heading 3305, as the same was intended to cover henna





which was intended to be a preparation for use on the hair and Central Excise duty at the rate of 8% is chargeable. The case decided in the light of explanations given by the department in their short reply. Hence, pure Henna powder can be included in Chapter 33 when it is only meant as preparation for use on hair.

- (ix) That it is a well settled principle of law in the matters of classification the concept of common parlance has great significance. As it is to every body's knowledge in India that henna/mehandi in common parlance is used in India by women for applying on their hands and feet on all religious and auspicious occasions. Therefore, its (henna powder) main use is application on hands and feet by women, but if it is specifically sold as a product/preparation for use on hair, it would merit classification under Chapter 3305.
- (x) That in the case of classification, one may also refer to the judgement of the Hon'ble Tribunal in the case of **Mayuri Henna Herbal (P) Ltd v CCE, Indore, 2012 (281) ELT 118**. In this case, for the year 2007-08 and 2008-2009 (upto 3.6.2008), the party was engaged in repacking or manufacturing of pure henna powder in 100 gram, 200 gram and 500 gram packets used for applying this henna powder on hands and feet. The classification was held by the Commissioner of Appeals under chapter 1404 and the same order of the commissioner was upheld by the Hon'ble Tribunal. Relevancy of the judgment here is that the period involved in this case is after 1.3.2007 when the department on their own has treated henna powder to be product of Chapter 14.
- (xi) THAT the Advance Ruling Authority has observed that in view of the amendments carried out in Customs Tariff Act, the question with regard to classifying Henna Powder under Tariff Heading 1404 does not arise in as much as the said tariff item has been omitted. It is totally ignoring the fact that it was the department who had after introduction of GST regime, registering the product Henna Leaves and Henna Powder under Tariff Heading 1404. If the legal position was so clear with regard to classification of Henna Leaves and Henna Powder, it cannot be understood as to why the product was registered under Tariff Heading 1404 at the time of registration.
- (xii) THAT the Advance Ruling Authority has referred to the Notification Nos 1/2017 and 41/2017 for holding the appellant products to be under Chapter 33 and while referring to Notification 1/2017 and 41/2017, the Advance Ruling Authority has not even discussed the manner in which the amendments have been carried out from time to time. The appellant in the submissions made herein above, has clearly referred to all the Notifications introduced from time to time dealing with the product Henna Leaves, Henna Powder and Paste. Therefore, without appreciating any of the above facts, the Advance Ruling Authority has abruptly jumped to the conclusion that Mehandi/Henna Powder is covered under Chapter 33 and would attract GST @ 18%. The learned Advance Ruling Authority ought to have considered each and every aspect of the case while giving the ruling on the classification of the product. Since the Advance Ruling Authority in the present case has totally failed to address any of the issues mentioned hereinabove, the impugned decision, is liable to be set aside.
- (xiii) THAT for the aforesaid reasons the appellant products Henna Powder has to be classified under Tariff Heading 1404 and not under 3304 or 3305, and the impugned order deserves to be set aside in toto.





(xiv) The appellant has also filed application for condonation of delay and submitted that the hard copy of the Advance ruling Order No. RAJ/AAR/2020/01 dated 06.05.2020 has been received by them through post on 18.05.2020. They had engaged a counsel from Delhi. Owing to covid-19 pandemic, there has been delay in communication with the counsel and preparing and finalizing of the appeal.

(xv) In view of above appellant has prayed to :-

- (a) quash and set aside the impugned Advance Ruling No. RAJ/AAR/2020-21/01 dated 06.05.2020 and thereby direct classification of the product Henna Powder under Chapter 1404,
- (b) to condone the delay of 10 days in filing the accompanying appeal.
- (c) to grant personal hearing of the appellant, and
- (d) to pass such order or orders, as may be deemed fit and proper in the interest of justice.

## 5. PERSONAL HEARING

A virtual personal hearing in the matter was held on 03.12.2020. Sh. S. Sunil, Authorized Representative of the appellant, appeared for personal hearing on 03.12.2020. He reiterated the submissions already made under grounds of appeal. He also submitted additional submissions on 07.12.2020 which is as under:-

5.1 The appeal has been filed before the Appellate Authority under Section 100 of Central Goods & Services Tax Act, 2017. Sub-Section (2) of Section 100 provides that every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant. Proviso to sub-section (2) gives power to the Appellate Authority to allow the applicant to present the appeal within a further period not exceeding thirty days if the appellate authority is satisfied that the applicant was prevented by sufficient cause from presenting the appeal within a period of 30 days. Sub-Section (3) provides that every appeal under this Section shall be in **such form, accompanied by such fee and verified in such manner as may be prescribed**. Form and manner of appeal has been prescribed under Rule 106 of the CGST Rules, 2017. From the reading of sub-section (3) of the S.100 of CGST Act, there are three procedural things to be done while filing of an appeal. They are as under:-

- (i) Form and Manner of Appeal
- (ii) Requisite Fee for filing an Appeal
- (iii) Manner in which Appeal has to be verified

In so far as the presentation/filing of the appeal is concerned, the limitation is prescribed under sub-section (2) of Section 100 of the CGST Act as 30 days. Admittedly, in the present case, if the date of receipt of the hard copy of the order is taken into consideration i.e. 18.05.2020, the period of limitation would expire on 17.06.2020 (excluding the date on which the order was received). The appeal in the present case has been filed online on 17.06.2020. In such a case, there is no delay in filing of the appeal. If the date of receipt of the order is taken as the date



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on which the impugned order has been uploaded in the website, there is delay of 10 days which, is, within the power of the Appellate Authority to condone it.

5.2 It was pointed out during the course of personal hearing that as to why the date of filing of the appeal should not be treated as the date on which the fee of Rs 10,000/- payable towards CGST has been paid. In this regard, it is submitted that the prescribed method of filing the appeal was E-Filing. The requisite fee for filing of the appeal is Rs 10,000/- towards CGST and Rs 10,000/- towards SGST. Unfortunately, the website while processing the filing and payment, the applicant was able to generate the challan and pay only the fee of Rs 10,000/- towards SGST. The system was not showing any other amount of fee to be paid towards CGST. At the relevant time, it was not possible to physically file an appeal or to deposit fee through any other mode. As the court fee was mandatorily required to be paid through online, the applicant was handicapped. Therefore, the applicant paid the SGST on 15.06.2020 so that the appeal could be filed within the period of limitation. After depositing the fee towards SGST, on 15.06.2020, the appellant electronically filed the appeal on 17.06.2020.

5.3 After filing of the appeal, there was no communication either written or oral for almost three and half months. The appellant forwarded the copy of the appeal to the department through their local consultant. On receipt of the copy of the appeal, it probably came to the notice of the department that there is a deficiency in fee payment. The appellant has paid only an amount of Rs.10,000 towards SGST and has not paid Rs.10,000 towards CGST, at the time of filing of the appeal. The appellant immediately made the deposit on 22.10.2020. A copy of the challan was also forwarded to the department. The hard copy of the appeal filed before the appellate authority which, was send through post along with a covering letter dated 22.10.2020. First written communication from the Appellate Authority was a letter dated 29.10.2020 stating that the appeal has not been filed in the prescribed format.

The incidents referred to hereinabove shows that it is not a case where the appeal has not been presented within time. There was certainly a deficiency in filing of appeal such as non-payment of full fee, not submitting the appeal in the prescribed format etc. These are all procedural lapses. Not submitting the appeal in the prescribed format was an inadvertent procedural lapse but nonpayment of Rs.10000 towards CGST was not deliberate or intentional.

5.4 Even during the erstwhile regime, whenever an appeal is filed before the Hon'ble CESTAT under the Central Excise Act, 1944 or the Customs Act, 1962 where the provisions for filing of the appeal was almost similar, if there was any deficiency in Court Fee, the Registrar of the Tribunal issues a letter for making full payment of court fee before listing of the appeal. Further, the date of the filing of the appeal is always treated as the date on which the appeal was presented before the Tribunal and due acknowledgement is also given for the said date. Such a practice continues to be in force even today.

5.5 That the Hon'ble Tribunal in the case of **Central India Tobacco Products Pvt Ltd v Collector of Central Excise, 1987 (29) ELT 472** while dealing with a case where there was deficiency in the court fee has held that in case the appeal is not properly stamped it ought to have been returned to the appellants for



presentation after supplying (affixing) the requisite court fees stamp. There is no such express provision in the Central Excises and Salt Act, 1944 and yet there is no prohibition in the Act in resorting to the principles contained in Civil Procedure Code.

5.6 That the Hon'ble High Court of Delhi in the case of ***Union of India v Roshal Lal & another AIR 1968 DELHI - 165, at page 166*** has in the context of paying deficient court fee held that a document not bearing proper Court-fee cannot be considered to be validly presented to the Court, but the principle underlying Section 149 suggests that the question of Court-fee is a question between the Revenue and the litigant and, therefore, the Court has a discretion albeit judicial discretion to allow a litigant to pay the Court-fee prescribed for any document by the law, which he should have paid earlier and the subsequent payment is to have the same force and effect as if such fee had been paid in the first instance. In the light of the above submissions, it is respectfully prayed that the delay in filing fee towards CGST may be condoned and the appeal may not be treated as time barred for such procedural lapses and the appeal may be decided on merits.

5.7 Re: Submission on HSN

In the appeal, the appellant has pointed out that in the HSN 'henna' continues to remain under Chapter 14. However, copy of the HSN was not submitted. With the present submission, the appellant is also submitting copy of relevant HSN. This would prove beyond doubt that 'Henna' is a vegetable product not elsewhere specified and cannot be taken out of Chapter 14.

6. We have examined the appeal memo filed by the appellant and submissions including written filed by them during the personal hearing.

6.1. The first issue relates to the delayed filing of appeal under Section 100(2) of the CGST ACT. The appellant has submitted that the Advance Ruling dated 06.05.2020 was received by him on 18.05.2020. They had engaged a counsel from Delhi. Owing to Covid-19 pandemic, there has been delay in communication with the counsel and preparing and finalizing of the appeal.

6.2 Further, to determine the date of filling of appeal, relevant provision of Act is reproduced below:-

*Section 100(2) of the CGST Act, 2017 stipulates that every appeal under this section shall be filed within a period of thirty days from the date on which the Advance Ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant.*

*Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.*

*Section 100(3) of the CGST Act, 2017 stipulates that every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.*



*Rule 106 of the CGST Rules, 2017 prescribes form and manner of appeal to the Appellate Authority for Advance Ruling as under:*

*(1) An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by an applicant on the common portal in FORM GST ARA-02 and shall be accompanied by a fee of ten thousand rupees to be deposited in the manner specified in section 49.*

*(2)-----*

*(3) The appeal referred to in sub-rule (1) or sub-rule (2), the verification contained therein and all the relevant documents accompanying such appeal shall be signed,- (a) in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and (b) in the case of an applicant, in the manner specified in rule 26.*

6.3 The Appellant has filed appeal on line on 17.06.2020. The Appellant has deposited SGST fee of Rs. 10000/- on 15.06.2020 and CGST fee of Rs. 10000/- on 22.10.2020. On perusal of appeal filed on 17.06.2020, it was found that the appellant has not filed the appeal in prescribed format. The appellant further filed the appeal in prescribed format on 02.11.2020. The appellant has submitted that the Advance Ruling dated 06.05.2020 was received by him on 18.05.2020. Hence, in terms of the provisions of Section 100(2) ibid, the applicant was required to file the appeal by 17.06.2020. However, Notification No. 35/2020-CT dated 03.04.2020 as amended vide Notification No. 55/2020-CT dated 27.06.2020 has extended the due date of compliance with any actions including filing of the instant appeal upto 31.08.2020. It has not been brought to the notice by the appellant that the such date has been further extended. Hence, the last date of filing appeal in this case was 31.08.2020. In the light of provisions and fact discussed above, we observe that the appellant has filed incomplete appeal on portal on 17.06.2020 without CGST fee and has filed the appeal in prescribed format (hard copy) on 02.11.2020. Therefore, we find that the date of filing of appeal is 02.11.2020 which is 63 days delay from the last date i.e 31.08.2020. Further, the Appellant has deposited CGST (appeal) fee of Rs. 10000/- on 22.10.2020. As per provisions, the authority has discretion to condone the delay for 30 days. As discussed, we hold that delay in filing of this appeal is beyond the discretionary power (30 days) provided to Appellate authority. Therefore, condonation application filed by the appellant is liable to be rejected.

7. The Appellant vide their additional submissions received on 07.12.2020, have submitted that:-

7.1 The applicant paid the SGST on 15.06.2020 so that the appeal could be filed within the period of limitation. After depositing the fee towards SGST, on 15.06.2020, the appellant electronically filed the appeal on 17.06.2020.

In this regard, we find that the appellant has paid Rs. 10,000/- as CGST fee on 22.10.2020. If there was any problem in depositing of CGST fee on 15.06.2020, they might have paid such amount on second day of deposit of SGST, i.e. on 16.06.2020 one day before filing of appeal or brought the said fact to the notice of the concerned authorities. No evidence has been produced before us to substantiate that the appellant made efforts to pay CGST fee, after the same was claimed to have been not paid due to technical glitch.

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7.2 That non-payment of CGST fee and non-filing appeal in prescribed format are procedural lapses.

In this regard, we find that payment of appeal fee and filing of appeal in prescribed format is mandatory requirements as per provisions of Section 100 (3) of the CGST Act, 2017. Section 100(3) of the CGST Act, 2017 stipulates that every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed. The said rules do not provide any discretion in non- implementation.

7.3 The appellant has relied upon on the following decisions-

(i)Central India Tobacco Products Pvt Ltd v Collector of Central Excise, 1987 (29) ELT 472;

(ii)Union of India v Roshal Lal & another AIR 1968 DELHI - 165, at page 166.

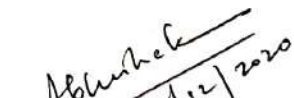
In this regard, we find that in both the above cases, the issue was related to non- payment of court fees; but in this case, issue is related to determination of date of filing of appeal also. In this case, part fee has been deposited on 15.06.2020 and second part fees have been deposited on 22.10.2020. In this case complete fee has been deposited and appeal in prescribed format has been filed after more than 30 days from the due date of filing of appeal. Therefore, these case laws are not squarely applicable in this case.

8. When it has been held that delay in filing of appeal is beyond the discretionary power provided to Appellate authority, therefore, we observe that discussing appeal on merit would not be relevant.

9. For the reasons discussed hereinabove, the condonation application filed by the appellant is hereby rejected and appeal is also rejected accordingly.



(Pramod Kumar Singh) 18.12.2020  
Member (Central Tax)

  
(Abhishek Bhagotia)  
Member (State Tax)



SPEED POST

To  
Sh. Sunil Kumar Gehlot  
M/s Sunil Kumar & Company  
Water Works Road, Sojat City  
Distt. Pali-306104



F. No. IV (16)AAAR/RAJ/04/2020-21/

7190

Date. 21 .12.2020

Copy to:-

1. The Chief Commissioner of CGST (Jaipur Zone), NCR Building, Statue Circle, Jaipur-302005.
2. The Chief Commissioner of SGST, Rajasthan, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
3. The Commissioner, CGST Commissionerate, Jodhpur
4. The Deputy Commissioner Circle Pali, Commercial Tax Department, Main Mandia Road, Near LIC Building, Pali- 306401
5. The Member, Rajasthan Authority for Advance Ruling, Goods and Service Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, , Jaipur-302005
6. Guard File



12-3  
21/12/20  
(Shiv Kumar Gupta)  
Superintendent

Chief Commissioner