



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

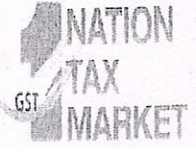
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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)11/North/Appeals/20-21

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-JC-049/20-21**

दिनांक Date : **29.01.2021** जारी करने की तारीख Date of Issue : **25.02.2021**

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathor, Joint. Commissioner (Appeals)

ग Arising out of Order-in-Original No (GST-RFD-06 No. ZW2412190122390 **dated** दिनांक: **12.12.2019** passed by Assistant/Deputy Commissioner, Central GST, Division-II, Ahmedabad-North

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

Appellant- M/s. P Das Infrastructure, B 08 Third Floor Sardar Patel Mall, Nikol Gam Road, Nikol, Ahmedabad-382350, Gujarat GSTN:24AAIFP7371H1Z1.

Respondent- Assistant Commissioner, Central GST, Div-II, Ahmedabad-North

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.



ORDER IN APPEAL

M/s. P Das Infrastructure, B 08 Third Floor Sardar Patel Mall, Nikol Gam Road, Nikol, Ahmedabad-382350, Gujarat GSTN:24AAIFP7371H1Z1 (hereinafter referred to as 'appellant') filed the present appeal against the Order-in-Original(GST-RFD-06 No. ZW2412190122390 dated 12.12.2019 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Div-II, Ahmedabad-North (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the appellant filed refund under Section 54 of the CGST Act,2017 in respect of refund on account of ITC accumulated due to inverted Duty Structure which was rejected amounting Rs. 0/ under the impugned order with the remark-'RFD 06 is being Sanctioned subject to condition of Sec 42 of CGST Act 2017'.

3. Being aggrieved with the impugned order, the appellant preferred this appeal contesting *inter alia* that the refund was already been sanctioned by the authorized officer but on portal while tracking refund, the RFD-06 is neither visible nor downloaded due to technical error/glitch.

4. Personal hearing in virtual mode was held on 23.12.2020 wherein Ms. Nisha Vora, CA reiterated the grounds of appeal memorandum.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum, written submissions made by them as well as oral submissions made at the time of virtual personal hearing and the submissions dated 30.06.2020 filed by the respondent. I find that the issue to be decided in the matter is as to whether in the facts and circumstances of the case, the appellant's claims for refund is legally permissible or otherwise?

6. The impugned order is issued on 12.12.2019 and the present appeal has been filed by on 30.06.2020 i.e. delay of filing of appeal is 109-days. In this regard, appellant has submitted that due to technical issue over portal the order was not available to them and hence the appellant requested for manual copy of the same from adjudicating authority. The appellant has received the manual copy of OIO on 05.06.2020. Therefore, considering the date of receipt of order by the appellant as 05.06.2020, the appeal has been filed well within time limit prescribed.



7. It is observed that on scrutiny of refund application, the adjudicating authority issued show cause notice dated 26.11.2019 regarding some clarification. The appellant under reply(GST-RFD-09) dated 28.11.2019 In response to SCN issued by adjudicating authority submitted clarification for the same along with the detailed submission. Considering the submission made by appellant, the adjudicating authority issued while above mentioned impugned order dated 12.12.2019 as rejected amounting Rs. 0/ under the impugned order with the remark-'RFD 06 is being Sanctioned subject to condition of Sec 42 of CGST Act 2017'.

8. It is observed from the above that the refund stands sanctioned but while tracking the status of the refund application, RFD-06 is not visible on portal and the copy of the order was also not downloaded due to technical error on the portal, which is the core grounds of the present appeal. In this context, it is observed that various courts on numerous occasions decided that legitimate benefit like refund etc, available if any to tax payer, cannot be restricted or denied based on account of any such technical glitch which arise due to system/software error. It reveals from the impugned order and statement of facts in appeal memorandum that the refund claim was found fit on merit for sanction to the adjudicating authority but formality for approval of the sanction could not happen in the system due to technical glitch. Therefore in view of above observation that technical glitch of such nature cannot take away legitimate monetary benefit which aroused to the taxpayer, I find force in the arguments of the appellant. I therefore observe that the technical glitch arose in the present matter which ultimately resulted in non-sanctioning of refund to the claimant is faulty and unlawful and hence the impugned order is not maintainable to that extent.

9. In view of the discussions above, I find infirmity in the impugned order of the nature of technical glitch as referred above as it resulted in non-sanctioning of the refund which was otherwise admissible, to which I reject and allow the appeal filed by the appellant to that extent only without going into merit of the case.



10. The appeal filed by the appellant stand disposed off in above terms.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

मुकेश राठौड़

(Mukesh Rathore)

मुकेश राठौड़

Joint Commissioner (Appeals)

संयुक्त आयुक्त (अपील्स)

Dated: 29.01.2021

Attested

Am

(Atul Kumar B. Amin)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,

M/s. P Das Infrastructure,
B 08 Third Floor Sardar Patel Mall,
Nikol Gam Road, Nikol,
Ahmedabad-382350, Gujarat
GSTN:24AAIFP7371H1Z1

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST, Appeals, Ahmedabad.
3. The Commissioner of Central Tax, Ahmedabad-North.
4. The Addl./Joint Commissioner, Central Tax (System), Ahmedabad- North.
5. The Asstt./Deputy Commissioner, Central Tax, Division-II, Ahmedabad- North.
6. Guard File
7. P.A. File

