सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/1237/2021-APPEAL /1639 TO 1644
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-035/2022-23 and 14.06.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	14.06.2022
(ङ)	Arising out of Order-In-Original No. ZX2406210138730 dated 11.06.2021 issued by The Deputy Commissioner, CGST, Division-IV (Changodar), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Jekson Vision Pvt. Ltd. (GSTIN-24AACCV8396F1Z0) Address:- Plot # 304, Sarkhej-Bavla Highway, Changodar, Ahmedabad, Gujarat-382213

(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.
(C)	**उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं।** For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website **www.cbic.gov.in.**

OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS) AHMEDABAD

ORDER-IN-APPEAL

Brief Facts of the Case :

M/s. Jekson Vision Private Limited, 304, Jekson Compound, Sarkhej Bavla Highway, Changodar, Ahmedabad – 382 213 (hereinafter referred as *'Appellant'*) has filed the present appeal against Order No. ZX2406210138730 dated 11.06.2021 passed in the Form-GST-RFD-06 (hereinafter referred as *'impugned order'*) rejecting refund claim of Rs. 48,528/-, issued by the Deputy Commissioner, CGST & C. Ex., Division – IV Changodar, Ahmedabad North (hereinafter referred as *'adjudicating authority'*).

2(i). Briefly stated the facts of the case is that the *'Appellant'* is holding GST Registration - GSTIN No.24AACCV8396F1ZO has filed the present appeal on 06.07.2021. The *'Appellant'* had filed refund application under ARN AA240521068132P for refund of Rs.48,528/- for the month of March'2021 *"on account of Refund by Supplier of deemed export"*. In response to said refund claim a show cause notice dated 07.06.2021 was issued to the appellant. In the said SCN it is mentioned that on scrutiny of refund claim following discrepancies are noticed :

1. *GSTR 3B for the month of March-2021 reflects no payment of tax made by claimant against Zero rated supply.*
2. *Since the refund claim is filed under "ON ACCOUNT OF REFUND BY SUPPLIER OF DEEMED EXPORT" category and no payment is seen in their GSTR 3B of relevant period, entire claim is liable for rejection.*

The appellant was asked to show cause as to why their refund claim should not be rejected for the reasons stated above. The appellant was also asked to furnish their reply within seven days.

Thereafter, the *adjudicating authority* has rejected the refund claim vide *impugned order* considering the Refund amount inadmissible as *"Wrong ITC Claim"*. Further, in the impugned order a Remark is mentioned as under :

> *"as no explanation has been given in the reply and no documentary proof has been provided for the objections raised in the notice, the claim is liable for rejection"*

2(ii). Being aggrieved with the impugned order the appellant has filed the present appeal wherein stated that they supplied material to EOU Unit as deemed export as per Section 147 of the CGST Act, 2017 read with Notification No. 48/2017 Central Tax dated 18.10.2017,

Notification No. 49/2017 Central Tax dated 18.10.2017 and Circular No. 14/14/2017 GST dated 06.11.2017 and claimed refund as per Rule 89 of the CGST Rules, 2017. The appellant has further stated that in case of supply to EOU they are charging full GST on Tax Invoice and paying to the government. While filing GSTR 1 they are showing EOU supply as taxable supply with tick mark on deemed export and then claiming refund against it, once received all supporting documents required for refund from customer. The appellant has further stated that they are doing the same exercise in every refund claim filed till date and all claims were approved. However, present refund application of March'21 is rejected without giving proper reason or jusitification.

2(iii). Further, the appellant has stated that they have submitted all supporting documents required for claim such as GST-RFD-01, Refund ANR Receipt, Form A, EOU endorsed Tax Invoice, All undertaking received from Customer, Form 5B, GSTR 1 for the month of March'21 etc. Further, the appellant has submitted that in response to SCN dated 07.06.2021 they have submitted the reply on 09.06.2021 with proper supporting documents & details and clarify the each point of discrepancies however, refund application was rejected on 11.06.2021 with Remark *"as no explanation has been given in the reply and no documentary proof has been provided for the objections raised in the notice, the claim is liable for rejection".*

Considering the above facts, the appellant has requested to verify their refund application properly as all details are provided which are self-explanatory and issue the sanction letter to them.

3. Personal Hearing in the matter was through virtual mode held on 23.05.2022 wherein Sh. Tushar Agrawal, CA appeared on behalf of the *'Appellant'* as authorized representative. During P.H. he has reiterated the submissions made by them till date to defend the case and informed that they have nothing more to add to it.

Discussion and Findings :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the *'Appellant'* in the Appeals Memorandum. I find that the *'Appellant'* had preferred the refund application *"on account of Refund by Supplier of deemed export"* for the amount of Rs.48,528/- for period of March'2021. In response to said refund applications Show Cause Notice was issued to them proposing

rejection of refund claims for reasons of GSTR 3B of March'21 reflects no payment of Tax against Zero Rated Supply. Thereafter, the said refund claim was rejected with Remark *"as no explanation has been given in the reply and no documentary proof has been provided for the objections raised in the notice, the claim is liable for rejection"*. However, the appellant in the present appeal stated that they have submitted the reply on 09.06.2021 in response to SCN dated 07.06.2021 with proper supporting documents and details and clarify the each point of discrepancies. In support of same the appellant has produced the copy of their reply to SCN. According to said reply, the appellant is showing EOU supply as taxable supply with tick mark on deemed export in GSTR 1 and claiming the refund of same. The appellant has also stated in their reply to SCN that they have discharged full GST liability for the month of March'21 by paying tax of Rs.75,26,261/- on 20.04.2021. I find that the appellant has supplied the copy of Screenshot of GSTR 3B and Challan paid for March'21 with their reply to SCN.

4(ii). Considering the above facts, the appellant in the present appeal has submitted that they have submitted their reply on 09.06.2021 with proper supporting documents & details and clarify each point of discrepancies; however refund application was rejected on 11.06.2021. On going through the SCN I find that it is alleged in the SCN that *"Since the refund claim is filed under "ON ACCOUNT OF REFUND BY SUPPLIER OF DEEMED EXPORT" category and no payment is seen in their GSTR 3B of relevant period, entire claim is liable for rejection"*. The appellant in the present appeal produced the copy of Challan. I find that as per said Challan the appellant has deposited Rs.75,26,261/- in respect of IGST, CGST & SGST. Further, from the screen shot of GSTR 3B I find that Tax/Cess paid in Cash as Rs.75,26,261/- (IGST 7504055, CGST 11103, SGST 11103). I find that the *'Appellant'* in the present appeal submitted that they have furnish their reply to the SCN and the adjudicating authority has rejected their refund claim with Remark that no explanation has been given and no documentary proof has been provided for objection raised in notice. In this regard, I have referred the Rule 92(3) of the CGST Rules, 2017, same is reproduced as under :

> *(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in* ***FORM GST RFD-08*** *to the applicant, requiring him to furnish a reply in* ***FORM GST RFD-09*** *within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in* ***FORM GST***

RFD-06 *sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall,* mutatis mutandis, *apply to the extent refund is allowed:*

Provided *that no application for refund shall be rejected without giving the applicant an opportunity of being heard.*

4(iii). In view of above legal provisions, *"no application for refund shall be rejected without giving the applicant an opportunity of being heard".* In the present matter, on going through copy of SCN, I find that opportunity of Personal Hearing has not been provided to the *'Appellant'.* Therefore, I find that the *impugned order* is issued without being heard the *'Appellant'.* Further, I am of the view that proper speaking order should have been passed by giving proper opportunity of personal hearing in the matter to the *'Appellant'* and detailing factors leading to rejection of refund claim should have been discussed. Else such order would not be sustainable in the eyes of law. Therefore, the *adjudicating authority* is hereby directed to process the refund application of the appellant by following the principle of natural justice. The *'Appellant'* is also directed to submit all relevant documents/submission before the *adjudicating authority.*

5. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, I allow the appeal of the "*Appellant*" without going into merit of all other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

14/06/22

(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 14.06.2022

Attested

14-6-22

(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

To,
M/s. Jekson Vision Private Limited,
304, Jekson Compound, Sarkhej Bavla Highway,
Changodar, Ahmedabad – 382 213

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-IV Changodar, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File