



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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फाइल संख्या : File No : GAPPL/ADC/GSTP/210/2022 -APPEAL

/3602-09

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-064/2022-23**

दिनांक Date : **26-09-2022** जारी करने की तारीख Date of Issue : **26-09-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

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Arising out of Order-in-Original No. **ZP24010210096023 DT. 07.10.2021**

issued by Deputy Commissioner, CGST & C.Ex., Division-VII, Ahmedabad North

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

**M/s. Trikon Telesoft Solutions Private Limited, 7th Floor, C-710, The First,
B/H Keshavbaugh Party Plot, Vastrapur, Ahmedabad-380015**

(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



ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s.Trikon Telesoft Solutions Private Limited, 7th Floor, C-710, The First, B/h. Keshavbaugh Party Plot, Vastrapur, Ahmedabad 380 015 (hereinafter referred as '*Appellant*') has filed the present appeal against Order No. ZP2410210096023 dated 7-10-2021 passed in the Form-GST-RFD-06 (hereinafter referred as '*impugned order*') rejecting refund claim of Rs.1,35,500/-, issued by the Deputy Commissioner, CGST & C. Ex., Division - VII S G Highway East, Ahmedabad North (hereinafter referred as '*adjudicating authority*').

2(i). Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAHCT1599H1Z2 has filed refund claim for Rs.1,35,500/- for refund of ITC accumulated due to export of goods and services without payment of tax for the period April 2019 to March 2020. The appellant was issued show cause notice reference NO.ZR2409210267911 dated 20.09.2021 proposing refund application is liable to be rejected for the reason "*Other*". A Remark was also mentioned in the SCN that following documents not submitted :

1. declaration under second and third proviso under Section 54 (3),
2. undertaking under Section 16 (2) and under Section 42 (2)
3. statement 2 u/r 89 (2) (C)
4. Self-declaration under sub rule (1) of Rule 91.

Further, the '*Appellant*' was asked to furnish reply to the SCN within 15 days from the date of service of SCN and a personal hearing was also offered to the '*Appellant*' on 21.09.2021. Thereafter, the *adjudicating authority* has rejected the entire refund claim vide *impugned order*. A remark is mentioned in the *impugned order* as "*SCN was issued for 1. FIRC submitted was for the relevant period. 2. Refund of RCM is not eligible. However, no reply receive within the time-limit/ Order is being issued ex-parte.*".

2(ii). Being aggrieved with the *impugned order* the appellant has filed the present appeal online on dated 03.01.2022 on the following grounds :

The impugned order passed by the adjudicating authority is a non speaking order which is contrary to facts and law deserve to be deleted. The adjudicating authority has grossly erred in Law by issuing online refund rejection order i.e. Form GST RFD 06 ; the adjudicating authority has not provided opportunity of being heard to them ; the adjudicating authority has



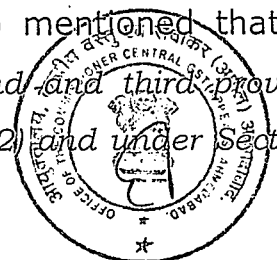
not provided refund rejection order itself along with specific reason ; the adjudicating authority has not recorded detailed reason in writing for rejection of refund claim ; the adjudicating authority has not reviewed adjournment filed by the appellant for a week ; the adjudicating authority has ignored the fact that the credit claimed in refund is duly reflecting in 2A even then status of credit along with GSTR2A were already submitted along with refund application ; the adjudicating authority grossly erred in not appreciating the fact that the appellant is registered in India under GST and supplying the services to its non-residents' customers for which it has also produced statement of foreign inward remittance certificate – FIRC's received by them for the funds received in foreign currency against such export supplies made by them and hence eligible for refund under GST ; the adjudicating authority has grossly erred in law by not considering the fact that as per first proviso to sub section (3) of Section 54 of CGST Act, 2017 read with Rule 89 (4) of CGST Rules, 2017 and Circular NO.17/17/2017-GST dated 15-12-2017 the appellant was eligible to claim refund of accumulated ITC taken on input and input services to the extent not utilized in any manner and the adjudicating authority has conveniently concluded without base and even without issuing order itself that the whole of the refund is inadmissible to the appellant as reply to SCN not submitted without reviewing the adjournment filed against the SCN.

In view of above submissions the appellant prayed to set aside the impugned order and allow refund.

3. Personal Hearing in the matter was through virtual mode held on 25.08.2022 wherein Sh. Pankaj R. Shah, CA appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has stated that they have nothing more to add to their written submission till date.

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 of accumulated ITC on account of Export of Goods & Services without payment of Tax in terms of provisions of Section 54(3) of the CGST Act, 2017. In response to said refund applications Show Cause Notice was issued to them proposing rejection of refund claims for reasons mentioned as "Other". In the SCN remark was also mentioned that – documents not submitted : **1.** declaration under second and third proviso under Section 54 (3), **2.** undertaking under Section 16 (2) and under Section



42 (2) 3. statement 2 u/r 89 (2) (C) 4. Self-declaration under sub rule (1) of Rule 91. Thereafter, the said refund claim was rejected by the *adjudicating authority* vide *impugned order*. I find that in the *impugned order* a remark is also mentioned as - "SCN was issued for 1. FIRC submitted was for the relevant period. 2. Refund of RCM is not eligible. However, no reply receive within the time-limit/ Order is being issued *ex-parte*".

4(ii). In view of foregoing facts, I find that the refund claim is rejected for the reason that appellant failed to submit prescribed documents such as declaration, undertaking, statement and self declaration. Further, the appellant in the present appeal submitted that due to technical reasons and unavailability of authorize person there was some occurrence of delay. Therefore, they have made a request on 05.10.2021 "Request for Adjournment of Personal Hearing and/or extension of due date for replying to SCN". However, the adjudicating authority has rejected the refund application without reviewing adjournment letter. 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.

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 was provided to the 'Appellant' on 21.09.2021 vide SCN dated 20.09.2021. However, I find that the *appellant* could not attended the said PH and without considering the *appellant's* request for adjournment of PH and/or extension in filing of reply to SCN the *adjudicating authority* has rejected the refund application vide *impugned order*. Therefore, I find that the *impugned order* is issued without being heard the 'Appellant'.

4(iii). Further, I find that it is nowhere mentioned in the SCN about FIRC (Foreign Inward Remittance Certificate) as well as about RCM




However, in the impugned order it is mentioned that *SCN was issued for 1. FIRC submitted was for the relevant period, 2. Refund of RCM is not eligible*. Therefore, I find that the adjudicating authority has rejected the refund claim on the grounds which were not raised in the SCN.

5. In view of above, I find that the *adjudicating authority* has violated the principle of natural justice in passing the *impugned order* vide which rejected the refund claim without being heard the *appellant* as well as without communicating the valid or legitimate reasons before passing said order. 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. Needless to say, since the claim was rejected on the ground of non submission of required documents, the admissibility of refund on merit is not examined in this proceeding. Therefore, any claim of refund filed in consequence to this Order may be examined by the appropriate authority for its admissibility on merit in accordance with Section 54 of the CGST Act, 2017 and Rules made thereunder.

6. 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. The '*Appellant*' is also directed to submit all relevant documents/submission before the *adjudicating authority*.


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

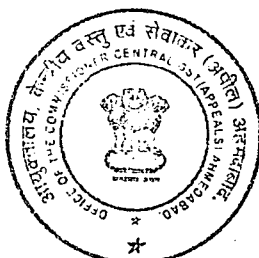
The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 26.09.2022

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



By R.P.A.D.

To,

M/s.Trikon Telesoft Solutions Private Limited,
7th Floor, C-710, The First, B/h. Keshavbaugh Party Plot,
Vastrapur, Ahmedabad 380 015

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-VII S G Highway East, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
- ✓ 6. Guard File.
7. P.A. File

