



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, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20230264SW0000111F40

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTP/2701/2022 -APPEAL / 6163-68
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-233/2022-23**
दिनांक Date : **08-02-2023** जारी करने की तारीख Date of Issue : **08-02-2023**
श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **ZY2405220432429 DT. 31.05.2022** issued by
The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**M/s. Vodafone Idea Limited, Building-A, Vodafone Idea House,
Corporate Road, Off S. G. Highway, Prahladnagar, 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. Vodafone Idea Limited, Building-A, Vodafone Idea House, Corporate Road, Off S. G. Highway, Prahladnagar, Ahmedabad - 380 015 (hereinafter referred as 'Appellant') has filed the present appeal against the Refund Sanction/Rejection order in the form RFD-06 bearing No. ZY2405220432429 dated 31.05.2022 (hereinafter referred as 'impugned order') passed by the Assistant Commissioner, CGST, Division - VIII Vejalpur, Ahmedabad South (hereinafter referred as 'adjudicating authority').

2(i). Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No.24AAACB2100P1Z3, engaged in providing telecommunication services under telecom license in India. The appellant has filed the present appeal online on 24.08.2022 and submitted the certified copy of impugned order within seven days of filing the appeal. The appellant in the present appeal submitted that -

- They inter-alia provides services in the nature of International Inbound Roaming Service ('IIR') to Foreign Telecom Operators ('FTO's) during the period April 2020 to March 2021. For supply of said services to customers located outside India, they fulfills all the conditions as mentioned in Section 2(6) of the IGST Act, 2017 to qualify said services as export of services.
- As per Section 54 of the CGST Act, 2017 read with Rule 96 of the CGST Rules, 2017 they had filed refund application for refund of tax paid on export of services in Form RFD-01. Particulars of RFD-01 is as under :

Refund ARN	Date of online filing application	Amount of IGST	Tax period
AA240422086979P	21 st April 2022	Rs.1,08,39,411/-	April 2020 to March 2021

- In response to said refund application a Show Cause Notice in the FORM RFD-08 dated 13.05.2022 was issued to the 'Appellant'. It was proposed that refund application is liable to be rejected for the reasons "Delay in Refund application" with Remark as "The invoice mentioned in Statement 3 of the refund claim which are before the period of April 2020 are time barred as per Section 54 of the CGST Act, 2017. Therefore, after excluding deficiency period, the only admissible refund is Rs.45,37,454/-". In response to said SCN they submitted reply in Form RFD-09 dated 26.05.2022, wherein required details mentioned in SCN were provided.



- However, partially considering the Appellant's submissions, the Adjudicating Authority has passed the 'impugned order' with Remarks as "On observing reply & previous documents, it is found that in no any FIRCs/eBRC has been mentioned its related invoices number so that the relevant date can't be verified as per provision and therefore, only the admissible refund is sanctioned herewith"

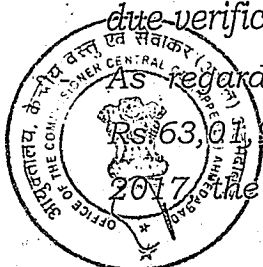
2(ii). Being aggrieved with the 'impugned order' the appellant has filed the present appeal on 24.08.2022 on the following grounds:

- Impugned Order passed by the Respondent to the extent adverse to the Appellant is *ex facie* untenable and unsustainable in law, and the same is liable to be set aside on the grounds as mentioned in this appeal and refund to be granted to the Appellant.
- As regards to Adjudicating Authority's observation that in certain FIRCs/e-BRCs does not have mention of its related invoices number due to which, the relevant date can't be verified, it is submitted that the statement 2 cannot be uploaded with blank fields while making the refund application. The format of Statement 2 mandates to enter complete details in the said statement, failing which the same cannot be uploaded with RFD-01. Hence, it would be obvious that the Appellant had submitted the required details at the time of filing refund application itself. Despite of providing all the required details, the Respondent issued SCN contending the same matter which was once again explained in detail in reply to SCN, along with which, the Statement detailing the following particulars had been attached therewith.

Invoice Number, Invoice Date, Invoice Value, Taxable Value, Tax, BRC/FIRC Date, BRC/FIRC Number, BRC/FIRC Value, e-BRC remarks, Bank Realization Date, Stream, Remark, File Name, Page number, Relevant Date based on, Relevant Date, Due Date, Remarks, Reference to para in RFD-09 reply.

- Thus, it is evident that they had submitted all the requisite details at the time of filing refund application, at the time of replying to SCN and during Personal Hearing. Despite of explanations and submissions, the Respondent has once again alleged on the same matter in the impugned order. Thus the contention of the Respondent is baseless and without due verification.

As regards to refund claim in respect of invoices involving GST of Rs. 63,01,957/- are hit by bar of time as per Section 54 of the CGST Act, the Appellant has referred Notification No. 13/2022-Central Tax

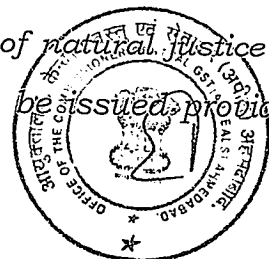


dated 05.07.2022. The benefit of excluding the time from 01.03.2020 to 28.02.2022 from the limitation period of 2 years applicable for filing of the refund claim can be availed by the Appellant in the instant case since the said exclusion is allowed by the Government by issuing the Notification No. 13/2022 dated 05.07.2022 by exercising the powers granted under Section 168A of the CGST/GGST Act. Since, the application in the present case is filed only on 22.06.2022 which is within the applicable final due dates as calculated in Statement 2 and therefore the Appellant contends that the allegations mentioned in the notice that the refund application with respect to the disputed export invoices is time barred are legally incorrect and the proceedings are liable to be dropped at this stage itself on the basis of the above mentioned submissions.

In view of above submissions the appellant has made prayer that the impugned order be set aside and accordingly :

- i. *Refund to be granted of IGST paid on zero rated supplies along with interest;*
- ii. *Any other/further relief, as may be deemed to be just and appropriate in the facts and circumstances of the case may be granted.*

3. Personal Hearing in the matter was held on 22.11.2022 wherein Mr. Sidharth Nanda, General Manager & Mr. Jitesh Wadhvani, General Manager appeared on behalf of the 'Appellant' as authorized representatives. During P.H. they have stated that they want to submit additional information, same was approved and seven working days period was granted for the same. Accordingly, the appellant has submitted the additional submission dated 28.11.2022. The appellant in the additional submission has stated that the adjudicating authority has passed a non speaking order, leading to invalid order thereby being liable to be set aside. They have referred case of Tonsel Private Limited Versus Goods and Service Tax Council Secretariat & Ors. Reported at 2022 (4) TMI 1196. They also relied upon case of M P Commodities Pvt. Ltd. Vs. State of Gujarat 2022-TIOL-368-HC-AHM-GST. The appellant has also referred CBIC's Instruction No. 03/2022-GST dated 14.06.2022 and submitted that at para 2.1.1 it has been clarified that – *"Principle of natural justice inter-alia provides that a detailed speaking order needs to be issued providing a basis for sanction/rejection of refund."*



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 for refund of tax paid on export of services under Section 54 of the CGST Act, 2017 read with Rule 96 of the CGST Rules, 2017 for the period from April 2020 to March 2021 for refund amount of Rs.1,08,39,411/-. In response to said refund application a Show Cause Notice was issued to them proposing rejection of refund claim on the ground of 'Delay in Refund Application'. Thereafter, the said refund claim was rejected by the *adjudicating authority* vide *impugned order* with Remark as - 'On observing reply & previous documents, it is found that in no any FIRCs/eBRC has been mentioned its related invoices number so that the relevant date can't be verified as per provision and therefore, only the admissible refund is sanctioned herewith'.

4(ii). Further, I find that the appellant has contended in the present appeal that they have provided all the required details in *Statement 2* and uploaded the same along with refund application. However, I find that the *adjudicating authority* has rejected the partial amount of refund on the sole ground that related Invoice Number is not mentioned in FIRCs/eBRC, hence relevant date can't be verified. Accordingly, I find it pertinent to refer the relevant provisions, the same is as under :

Section 54. Refund of tax.- *

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

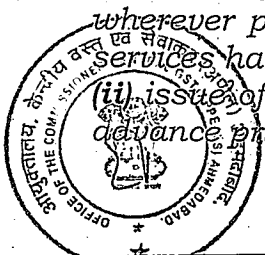
Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in ¹[such form and] manner as may be prescribed.

Explanation.- For the purposes of this section,-

(2) "relevant date" means-

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of-

(i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or
(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;



In view of above provisions, I am of the view that it is not difficult to ascertain the relevant date, once we find out whether the payment is received in advance for providing the services or otherwise. In the present case the refund claim is filed on 21.04.2022 for the period from April 2020 to March 2021.

4(iii). Further, I find that the Appellant has referred the CBIC's Notification No. 13/2022-Central Tax dated 05.07.2022. The relevant para is reproduced as under :

(iii) excludes the period from the 1st 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.

In view of above, I find that in respect of refund claims for which due date for filing refund claim falls during period from 01.03.2020 to 28.02.2022, two years time limit under Section 54 of the CGST Act, 2017 is to be reckoned, excluding the said period. In the subject case, the claim is filed on 21.04.22 for the period April'20 to March'21 and the adjudicating authority has rejected the partial refund on the ground that they can't verify the relevant date because related invoice number not mentioned in the FIRC/eBRC.

4(iv). In view of foregoing facts, I find that the refund claim is rejected for the reason that either the *appellant* failed to provide the relevant details/documents or it is not possible for *adjudicating authority* to verify the relevant date. However, I find that the *appellant* has submitted in the present appeal that they have provided all the required details with refund application as well as in reply to SCN to the proper officer also. Further, I find that the appellant has produced the copies of Bank Realization Certificates which contains the details such as Shipping Bill No. & Date, Date of receipt of payment, Value etc. However, I find that the adjudicating authority has rejected the partial amount of refund claim on the ground that relevant date can't be verified. Therefore, I am of the view that the refund claim is rejected without proper verification of the documents and details submitted by the appellant at the time of refund application and reply to SCN.

4(v). Considering the foregoing facts, I find that in the present matter the partial amount of refund claim is solely rejected on the



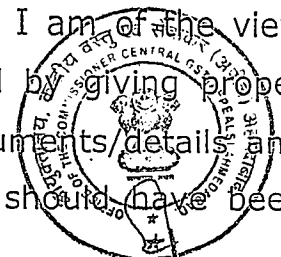
ground that related Invoice Number is not mentioned in FIRCs/eBRC, hence relevant date can't be verified. Accordingly, I find it pertinent to refer the Rule 92(3) of the CGST Rules, 2017, same is reproduced as under :

*(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, if the proper officer is of the view that whole or any part of refund is not admissible to the applicant he shall issue notice to the applicant and after considering the reply of applicant he can issue the order. However, in the present matter the *adjudicating authority* has issued the *impugned order* without considering the reply of *appellant*. Further, I find that "*no application for refund shall be rejected without giving the applicant an opportunity of being heard*". In the present matter, on going through the copy of SCN and grounds of appeal, I find that the opportunity of Personal Hearing was provided to the '*Appellant*', however, according to the '*Appellant*' the *impugned order* is issued without considering the documents/details submitted by them with refund application as well as with reply to SCN and during Personal Hearing. Therefore, to conduct Personal Hearing just for namesake or formality, just to follow the principle of natural justice and passed the order by ignoring the documents/details submitted in PH is just improper and unacceptable.

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 considering the *appellant's* reply, documents/details 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 to the appellant to produce required documents/details and detailing factors leading to rejection of refund claim should have been

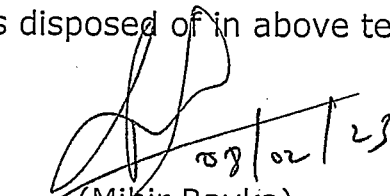


discussed. Else such order would not be sustainable in the eyes of law. Therefore, the *adjudicating authority* is hereby directed to process the refund application of the *appellant* by following the principle of natural justice. Needless to say, since the claim was rejected on the ground of non submission or unavailability of documents/details, 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 the provisions of Section 54 of the CGST Act, 2017.

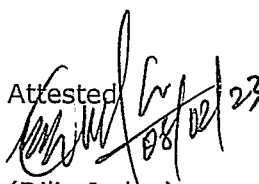
6. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper to the extent of rejection of refund claim of Rs.63,01,957/- and accordingly, I allow the appeal of the *Appellant* without going into merit of all other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017. The '*Appellant*' is also directed to submit all relevant documents/submission before the *adjudicating authority*.

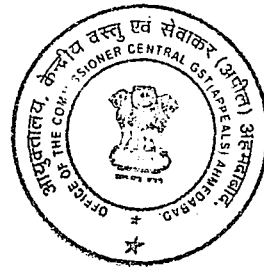
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 08.02.2023

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



By R.P.A.D.

To,
M/s. Vodafone Idea Limited,
Building-A, Vodafone Idea House,
Corporate Road, Off S. G. Highway,
Pralhadnagar, 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-South.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-VIII Vejalpur, Ahmedabad South.
5. The Superintendent (System), CGST-Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

