



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- 20230264SW000000A224

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्यां : File No : GAPPL/ADC/GSTP/1727/2022 -APPEAL / 9168-92

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-241/2022-23**

दिनांक Date : **27-02-2023** जारी करने की तारीख Date of Issue : **28-02-2023**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

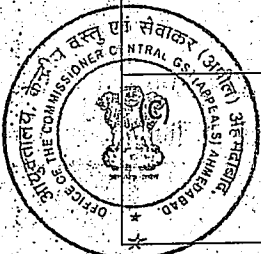
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZU2403220004061 DT. 01.03.2022** issued by
The Assistant Commissioner, CGST, Division-VI, Ahmedabad South

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

**Nisarg Jitendrakumar Mehta of M/s. Techitic Solutions, 1201,
12th, Aaryan Workspace-2, OPP. Vasundhara Society,
Gulbai Tekra, Ahmedabad, Gujarat-380006**

(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.
	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 .



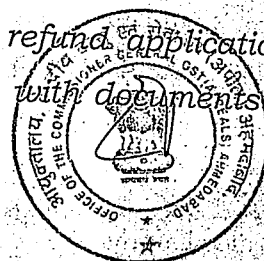
ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Tectic Solutions (Legal Name - Nisarg Jitendrakumar Mehta), 1201, 12th, Aryan Workspace-2, Opp. Vasundhara Society, Gulbai Tekra, Ahmedabad - 380 006 (hereinafter referred as 'Appellant') has filed the appeal against the Order No. ZU2403220004061 dated 01.03.2022 (hereinafter referred as 'impugned order') passed in the form RFD-06 by the Assistant Commissioner, CGST, Division - VI, Ahmedabad South (hereinafter referred as 'Adjudicating Authority').

2(i). The Brief facts of the case is that the 'Appellant' holding GST Registration - GSTIN No.24AZEPM6208P1Z1 had filed refund application dated 15.12.2021 on account of "Refund of ITC on Export of Goods & Services without payment of Tax" for the period from October 2019 to March 2020 for amount of Rs.1,86,208/-. In response to said refund application a 'Notice for rejection of application for refund' under Form-GST-RFD-08 was issued on 03.02.2022 wherein it was proposed that refund application is liable to be rejected for the reasons 'Other'. In the said SCN a Remark was also mentioned as "FIRC not matched with the Statement-3 & HSN code not mentioned in Annexure-B required as per Cir. No. 135/05/2020-GST and refund also partially time barred, hence why should not be rejected". The Appellant had submitted their reply to show cause notice under Form-GST-RFD-09 dated 22.02.2022 with supporting documents such as Annexure B, FIRC BRC merge, GSTR 2A etc. Thereafter, the Adjudicating Authority has rejected the entire refund claim of Rs.1,86,208/- vide impugned order dated 01.03.2022.

2(ii). Being aggrieved with the "impugned order" the 'Appellant' has filed the present appeal on 30.05.2022 on the following grounds -

- They are engaged only into providing web development, mobile app development and e commerce development services outside India only without payment of Tax. Accordingly, as per Section 54(3)(i) of the CGST Act, 2017 they filed refund application for refund of accumulated ITC under Form RFD-01 dated 15.12.21 for the period from October'19 to March'20.
- A SCN was issued wherein it was alleged that refund application is partially time barred and FIRC/BRC not matched with documents and documents are incomplete.



- But the list of documents attached with application was in line with the documents list specified in Circular No. 125/44/2019-GST dated 18.11.2019. Refund application is also not time barred in terms of Hon'ble Supreme Court's order in the matter of Miscellaneous Application No. 21 of 2022 in M.A. 665 of 2021, in SMW(C) No. 3 of 2020.
- Further, as per Section 54 of the CGST Act, 2017 refund application can be filed before expiry of two years from the relevant date and the relevant date is defined/ specified under the Explanation in Section 54 is end of the financial year in which such refund claim arises.
- Further, all the FIRC/BRC copy is matched with the Statement-3 and they have attached all FIRC/BRC copy related to export related to without payment of tax.

In view of above submissions the *appellant* has made prayer that Refund amounting to Rs.1,86,802/- shall be allowed and sanctioned to them.

3. Personal Hearing in the matter was held on 11.01.2023 wherein Ms Deepika Lodha was appeared on behalf of the '*Appellant*' as authorized representatives. During P.H. she has asked for 05 working days to submit additional submission, which was granted. Accordingly, they have submitted the documents i.e. FIRC with reconciliation on 17.01.2023 and made request to consider the same.

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 as well as additional submission. I find that the Appellant has filed refund application for refund of ITC accumulated due to export of services without payment of tax. I find that the appellant has filed refund application on 15.12.2021 for the period from October'19 to March'20 for the amount of Rs.1,86,208/-. The entire refund application of Rs.1,86,208/- is mainly rejected on the time limitation ground and on the ground of FIRC/BRC not matched with Statement-3.

4(ii). The refund claim is filed for accumulated ITC due to export of services without payment of tax and same is rejected on time limitation ground, the relevant provisions are reproduced 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:



.....
 (3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than-

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

.....
Explanation.- For the purposes of this section,-

(2) "relevant date" means-

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

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;]

(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-

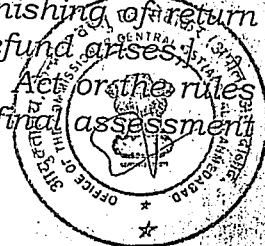
(i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) [in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;]

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;



(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.

4(iii). Further, as the subject refund claim is rejected on limitation ground I find that the *appellant* in the present appeal proceedings has referred the order of Hon'ble Supreme Court which is passed on 10.01.2022 in the matter of Miscellaneous Application No. 21 of 2022 in M.A. 665 of 2021, in SMW(C) No. 3 of 2020. Hon'ble Supreme Court vide Order dated 10.01.2022 ordered that for computing period of limitation for any suit, appeal, application or proceedings the period from 15.03.2020 till 28.02.2022 shall stand excluded and consequently balance period of limitation remaining as on 03.10.2021 if any, shall become available with effect from 01.03.2022 and that in cases where the limitation would have expired during the period from 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.

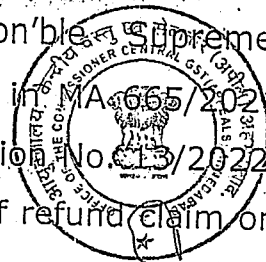
Further, I find that on the subject matter Notification No. 13/2022-Central Tax dated 05.07.2022 has also been issued by the CBIC. The relevant para is reproduced as under :

(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 foregoing facts, 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 was filed on 15.12.2021 for the period from October'19 to March'20, considering the due date prescribed under Section 54 the claim period for which the due date falls during 01.03.2020 to 28.02.2022 is not hit by time limitation under Section 54 of the CGST Act, 2017.

4(iv). In view of above, I find that the subject refund claim was filed on 15.12.2021 for the period October'19 to March'20; accordingly, following the order of Hon'ble Supreme Court in Miscellaneous Application No. 21 of 2022 in M.A. 665/2021 in SMW(C) No. 3/2020 as well as in the light of Notification No. 13/2022-Central Tax dated 05.07.2022, I hold that the rejection of refund claim on the ground



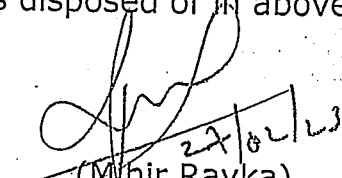
of time limitation is not legal and proper. Hence, the appeal filed by the *appellant* succeeds on time limitation ground.

4(v). Further, I find that the refund claim is also rejected by the *adjudicating authority* on the ground that from the uploaded documents the FIRC/BRC are not matched with Statement-3. However, I find that the *appellant* in the present appeal proceedings has submitted that they have provided all the required details with refund application as well as in reply to SCN to the proper officer and the documents they submitted are in line with the documents prescribed/specified vide Circular No. 125/44/2019-GST dated 18.11.2019. Further, I find that the *appellant* in the present appeal proceedings has produced the copy of Statement-3 and relevant copies of BRC/FIRC mentioned therein. Therefore, I am of the view that the refund claim is rejected without proper verification of the documents and details submitted by the *appellant* and also rejected wrongly on time limit ground as discussed in foregoing paras. Therefore, the *impugned order* is not legal and proper.

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 allowed the appeal of the "*Appellant*". The '*Appellant*' is also directed to submit all the relevant documents/submission before the *adjudicating authority* to substantiate their claim.

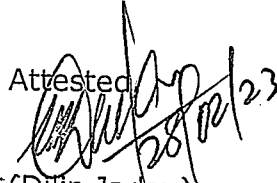
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 27.02.2023

Attested


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



By R.P.A.D.

To,
M/s. Techtic Solutions
(Legal Name - Nisarg Jitendrakumar Mehta),
1201, 12th, Aryan Workspace-2,
Opp. Vasundhara Society, Gulbai Tekra,
Ahmedabad - 380 006

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 Dy/Asst. Commissioner, CGST, Division-VI, Ahmedabad South.
5. The Superintendent (System), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

