



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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फाइल संख्या : File No : GAPPL/ADC/GSTD/273/2022 -APPEAL / 19275-80

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-243/2022-23**

दिनांक Date : **28-02-2023** 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)

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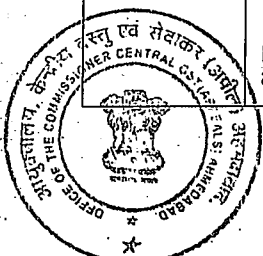
Arising out of Order-in-Original No. **ZU2401220138647 DT. 17.01.2022** issued by The Assisnat Commissioner, CGST, Division-VIII, Ahmedabad South

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

Appellant	Respondent
The Asstt Commissioner, CGST, Division-VIII, Ahmedabad South	M/s. Iglobal KPO Services LLP, D 1208, 8th Floor, Titanium City Centre, Nr. Sachin Tower, Satellite, 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 :**

The Assistant Commissioner, CGST, Division VIII, Ahmedabad South (hereinafter referred to as the '**Appellant/Department**') in terms of Review Order No. 15/2022-23 dated 09.06.2022 issued under Section 107 of the CGST Act, 2017, has filed the present appeal offline in terms of Advisory No.9/2020 dated 24.09.2020 issued by the Additional Director General (Systems), Bengaluru. The appeal is filed on 22.06.2022 against the Order No. ZU2401220138647 dated 17.01.2022 (hereinafter referred to as the '**Impugned Order**') passed in Form-GST-RFD-06 by the Assistant Commissioner, CGST, Division VIII, Ahmedabad South (hereinafter referred to as the '**Adjudicating Authority**') sanctioning refund to **M/s. Iglobal KPO Services LLP**, D 1208, 8th Floor, Titanium City Centre, Nr. Sachin Tower, Satellite, Ahmedabad - 380 015 (hereinafter referred to as the '**Respondent**').

2. Brief facts of the case are that the '**Respondent**' holding GSTN No. 24AAGFI3004C1Z6 had filed refund claim of Rs.21,88,883/- for the period December 2019 to March 2020 for ITC accumulated due to export of service without payment of duty vide ARN No. AA240122023589H dated 07.01.2022 under Rule 89(4) of the CGST Rules, 2017 read with Section 54(3) of the CGST Act, 2017. Out of said refund claim of Rs.21,88,883/- the *adjudicating authority* vide impugned order dated 17.01.2022 (RFD 06) has sanctioned refund of Rs.20,62,664/- and rejected refund claim of Rs.1,26,219/- on the ground that declared Net ITC was found more than actual Net ITC.

During Review of the 'Impugned Order' dated 17.01.2022 the department has observed as under :

- *the claimant has filed refund claim on account of ITC accumulated due to export of service without payment of tax for the period from December 2019 to March 2020 vide ARN dated 07.01.2022 which was sanctioned by the adjudicating authority vide Impugned Order dated 17.01.2022.*
- *The adjudicating authority has erroneously sanctioned the claim instead of rejecting the same in accordance with Section 54(1) of the CGST Act, 2017.*



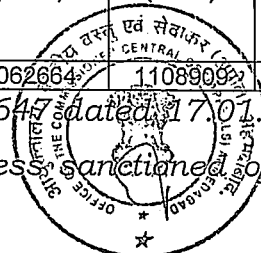
- the claim has been filed on 07.01.2022 for ITC accumulated due to export of services without payment of tax for the period from December 2019 to March 2020. It is pertinent to note that the time limit for filing a refund claim under Section 54(1) is two years from the relevant date.
- It is noticed that the claimant has raised invoice No. 9 dated 01.12.19 for export of services and the payment for the said invoice has been received on 05.12.19. Thus, in this case, the relevant date is the date of payment in foreign exchange which is 05.12.19. Also, claimant has raised invoice No. 10 dated 01.01.20 for export of services and payment for the said invoice has been received on 27.12.19; i.e. before issuance of invoice, therefore, relevant date in the second case is 01.01.20 which is the date of invoice.
- Thus, refund claim for both these invoices should have been filed by 04.12.2021 and 31.12.2021 respectively, i.e. within two years from the relevant date. However, the present claim is filed on 07.01.2022. Therefore, the adjudicating authority has failed to consider the limitation aspect and erroneously sanctioned the claim which was time barred.

3. In view of above, the appellant/department has filed the present appeal on the following grounds:

- i. It is noticed that the present claim has been filed on 07.01.2022 for ITC accumulated due to export of services without payment of tax for the period December 2019 to March 2020. It is pertinent to note that the time limit for filing a refund claim under Section 54(1) is two years from the relevant date.
- ii. The relevant date in the present case in respect of Invoice No. 9 and 10 as prescribed in the explanation (2)(c) to Section 54 of the CGST Act, 2017 is 05.12.2019 and 01.01.2020, as discussed above; and refund should have been filed by 04.12.2021 and 31.12.2021 respectively, i.e. within two years from the relevant date. However, the present claim is filed on 07.01.2022. Thus, the adjudicating authority has failed to consider the limitation aspect and erroneously sanctioned the excess claim as shown below which was time barred.

Zero rated turnover as per RFD 01 (1)	Zero rated turnover after deducting invoice no. 9 & 10 (2)	Net ITC (3)	Adjusted Total Turnover (4)	Refund Amount sanctioned (1*3/4)	Refund Amount admissible (2*3/4)	Excess Refund amount sanctioned
81603119	43870646	2062664	81603119	2062664	1108909	953755

- iii. Therefore, the Order No. ZU2401220138647 dated 17.01.2022 (RFD 06), is required to be set aside and excess sanctioned of refund of



Rs.9,53,755/- sanctioned erroneously, is required to be recovered along with interest and penalty as claimant has misled the department.

- iv. In view of above grounds the appellant has made prayer to set aside the impugned order wherein the adjudicating authority has erroneously sanctioned Rs.20,62,664/- instead of Rs.11,08,909/- under Section 54(1) of CGST Act, 2017 ; to pass an order directing the said original authority to demand and recover the amount erroneously refunded of Rs.9,53,755/- (Rs.20,62,664/- minus Rs.11,08,909/-) with interest and penalty; to pass any other order(s) as deemed fit in the interest of justice.

4. The Respondent has submitted their submission vide letter dated 13.01.2023. The Respondent has submitted that -

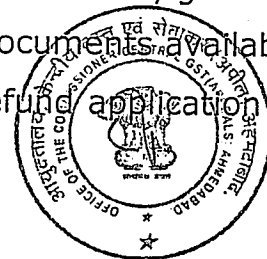
- i. The department has gone to appeal challenging the order to extent of Rs.953755/- considering the said amount as time barred on the basis of two invoices i.e. Invoice No. 9 dated 01.12.19 for which amount received on 05.12.19 and Invoice No. 10 dated 01.01.20 for which amount received on 27.12.19. So, due date for these two invoices is considered 04.12.21 and 31.12.21.
- ii. This fact was already considered while passing the refund order. Further, if at all there is delay, we request to condone delay and upheld the refund order by quashing the appeal filed as there is Supreme Court Order as well as GST Notification whereby allowed to exclude the period from 01.03.20 to 28.02.22 for computation of period for the purpose of filing refund application under Sectin 54 and 55 of the CGST Act, 2017. Hence, requested to consider -
- CBIC Notification No. 13/2022 dated 05.07.22
 - Supreme Court judgment in cognizance for extension of limitation.

Personal Hearing :

5. Personal Hearing in the matter was held on 17.02.2023 wherein Mr. Sandip Gupta, C.A. was appeared on behalf of the 'Respondent' as authorized representative. During PH he has stated that they have nothing more to add to their written submissions made till date.

Discussion and Findings :

6. I have carefully gone through the facts of the case, grounds of appeal, submission made by the Respondent and documents available on record. I find that the Respondent has filed the refund application of



accumulated ITC due to export of service without payment of duty for the period from December 2019 to March 2020 on 07.01.2022. The *adjudicating authority* has sanctioned the partial amount of said refund claim to the *Respondent* vide *impugned order*. By referring the provisions of Section 54 of the CGST Act, 2017, the *department/appellant* in the present appeal has mainly contended that out of the said refund claim certain amount of refund claim was time barred and therefore, the excess amount of refund claim of Rs.9,53,755/- so erroneously sanctioned by *adjudicating authority* is required to be recovered with interest and penalty.

7. I find that the *department* is mainly relying upon the provisions of Section 54 in the present appeal. Accordingly, the same is 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:

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;

The *department* has contended in the present appeal that the *Respondent* has received the payment on 05.12.19 for Invoice No. 9 dated 01.12.19 ; and in respect of Invoice No. 10 dated 01.01.20 received payment on 27.12.19. Thus, in one case payment received after issuance of invoice and in another case payment received before issuance of invoice. Accordingly, the *department* in the present appeal contended that the relevant date in view of above provisions comes to 05.12.19 & 01.01.20 for Invoice No. 9 & 10 respectively and; therefore the last date for filing of refund application arrive on 07.12.2021 &



31.12.21 i.e. two years from relevant date. The present refund application is filed on 07.01.2022.

8. I find that in support of their claim the *Respondent* has referred the CBIC's Notification No. 13/2022-Central Tax dated 05.07.2022. The relevant para of said notification 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.

9. Further, in the above context, I find that Respondent has referred the Order passed on 10.01.2022 by Hon'ble Supreme Court in 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.

10. In view of above, I find that in the present matter the refund claim was filed for the period December'19 to March'20 on 07.01.2022. Further, I find that the department/appellant by considering the payment received by *Respondent* in connection with export of services contended that the last date for filing of refund application comes on 04.12.21 & 31.12.21 in respect of Invoice No. 9 & 10 respectively, however refund claim is filed on 07.01.2022. Accordingly, department is contending in present appeal that refund claim in respect of said invoices is time barred in terms

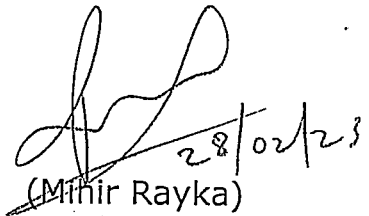


the CGST Act, 2017. However, I find that in the present matter the relevant date for filing the refund application is falling within the period of 15.03.2020 to 28.02.2022. Accordingly, following the order of Hon'ble Supreme Court in MA 665/2021 in SMW(C) No. 3/2020 as well as in the light of Notification No. 13/2022-Central Tax dated 05.07.2022, I am of the view that the refund claim filed on 07.01.2022 in respect of Invoice No. 9/05.12.19 & 10/01.01.20 is well within the time limit prescribed under Section 54 of the CGST Act, 2017.

11. In view of the above discussions, I do not find any force in the contentions of the 'Appellant/Department'. Accordingly, I find that the *impugned order* passed by the *adjudicating authority* is correct and as per the provisions of GST law. Consequently, I do not find any reason to interfere with the decision taken by the "Adjudicating Authority" vide "*Impugned Order*". Accordingly, I upheld the "*Impugned Order*" and reject the appeal filed by the 'Appellant/Department'.

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

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


(Mihir Rayka)

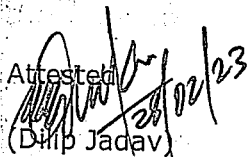
Additional Commissioner (Appeals)

Date: 28.02.2023



Appellant

Respondent

Attested

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

By R.P.A.D.

To,
The Assistant / Deputy Commissioner,
CGST, Division - VIII, Ahmedabad South.

M/s. Iglobal KPO Services LLP,
D 1208, 8th Floor, Titanium City Centre,
Nr. Sachin Tower, Satellite, 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, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

