



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2304/2022 -APPEAL

19929 - 32

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-269/2022-23**

दिनांक Date : **27-03-2023** जारी करने की तारीख Date of Issue : **27-03-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZS2406220374897 DT.22.06.2022** issued by The Assistant Commissioner, CGST, Division-VII, Ahmedabad South

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

M/s. Prodigy Software Ltd., 103, Shapath-II, Opp. Rajpath Club, SG Highway, Ahmedabad-380054

(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. Prodigy Software Ltd., 103, Shapath-II, Opp. Rajpath Club, S. G. Highway, Ahmedabad - 380 054 (hereinafter referred as '**Appellant**') has filed the present appeal against the Order No. ZS2406220374897 dated 22.06.2022 (hereinafter referred as '**impugned order**') passed by the Assistant Commissioner, CGST, Division - VII, 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.24AACCP0112H1Z4 had filed the refund application on account of "Refund of ITC on Export of Goods & Services without Payment of Tax" for the period from April 2021 to March 2022 on dated 10.05.2022 for Rs.12,08,124/-. In response to said refund claim a Show Cause Notice dated 06.06.2022 was issued to the '**Appellant**'. It was alleged in the SCN that they have shown wrong amount received against FIRC's as under :

FIRC No.	Date	Amount shown in Statement 3	Amount shown in FIRC submitted with claim	Difference (Excess amount shown in Statement-3)
2000IRT21001023	08.04.21	11528089	2748797	-8779292
2000IRT21001072	15.04.21	2084854	498284	-1586570
2002IRT21000009	12.0520	5782044	1979447	-3802597
TOTAL		19394987	5226528	-14168459

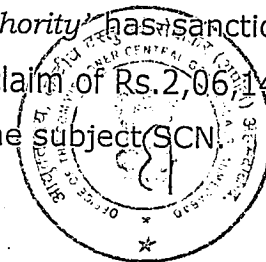
Therefore, in view of above table, excess amount of Rs.1,41,68,459/- is claimed as zero rated turnover. So, actual amount of zero rated turnover to be considered for the purpose of the claim is Rs.6,88,68,000/- (83036489-14168459)

Accordingly, revised calculation for maximum refund is as under :

Turnover of zero rated supply of goods and services (1)	Adjusted total turnover (2)	Net Input Tax Credit (3)	Maximum refund amount to be claimed (1*3/2)
68868000	83036489	1208124	1001982

In view of above calculation it was proposed in the SCN that as to why refund of Rs.2,06,142/- should not be rejected and refund claim be restricted to Rs.10,01,982/- instead of Rs.12,08,124/-.

Thereafter, the '**adjudicating authority**' has sanctioned the refund of Rs.10,01,982/- and rejected the refund claim of Rs.2,06,142/- vide '**impugned order**' for the reasons as mentioned in the subject SCN.



2(ii). Being aggrieved with the *impugned order* dated 22.06.2022 the 'Appellant' has filed the present appeal on dated 07.07.2022 on the following grounds :

- They having business of Export of Services for Software Sales and maintenance. They have done all export against LUT without payment of IGST. Accordingly, applied for refund of accumulated ITC for F.Y. 2021-22 on 10.05.22 for Rs.12,08,124/-.
- On 06.06.2022 department has issued SCN in the Form RFD-08, wherein raised issue that 3 invoices had correspondingly less amounting FIRC than invoice amount. In response to said SCN a detailed reply was filed in the FORM RFD-09 under Rule 92(3) dated 17.06.2022. Copy of same attached with present appeal. Reply to SCN is reproduced as under :
 - o This issue has happened due to technical limitation imposed by the new utility provided for filing details for refund in Statement 3 [Rule 89 (2)(b) & 89 (2)(c)] uploaded by them at the time of filing refund application. In the earlier version, in this statement utility, there was a facility to mention multiple FIRC against one invoice but now in new utility the same has not been provided, so they could not mention multiple FIRC against same invoice when payment is received in parts against same invoice.
 - o All three cases as mentioned in the Form GST RFD-08, are the instances where there are more than one FIRC against one invoice issued by them. they have already submitted all the FIRC along with invoices in the files uploaded as attachment with the refund application as referred to above.
- After detailed reply in Form RFD-09 dated 17.06.2022 still the learned authority has given reason for not allowing partial amount of refund as "Claimant neither filed reply to the SCN nor did they appear for personal hearing granted on 21.06.2022."

In view of above submissions the appellant has made prayer as under :

1. The Assessing Officer clearly ignored their reply and clearly mentioned in Order that Claimant has not replied to the show cause notice.
2. Query raised in Show Cause Notice is completely clear in their detail reply and it's all because of technical issue and nothing else.
3. Appellant craves leave to add, alter or amend any or all grounds of appeal without prejudice to each other at the time of personal hearing.

3. Personal Hearing in the matter was held on 25.11.2022 wherein Mr. Shridhar Shah, C.A. appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has stated that they have nothing more to add to their earlier submissions till date.

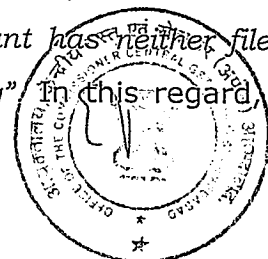


Discussion and Findings :

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 "Refund of ITC on Export of Goods & Services without payment of Tax" under Rule 89 of the CGST Rules, 2017 read with Section 54 of the CGST Act, 2017 for amount of Rs.12,08,124/-. In response to said refund application Show Cause Notice was issued to them proposing rejection of refund claim of Rs.2,06,142/- for the reason that appellant has shown wrong amount of FIRC's in Statement 3; that by considering correct amount of FIRC's in Statement 3 which resulting reducing of zero rated turnover value in the prescribed Formula for ascertaining admissible amount of refund. Thereafter, the said amount of refund claim of Rs.2,06,142/- was rejected by the *adjudicating authority* vide *impugned order* dated 22.06.2022 and sanctioned refund of Rs.10,01,982/- instead of total claim of Rs.12,08,124/-. I find that the *adjudicating authority* has mentioned in the *impugned order* that "claimant has neither filed reply to the SCN nor did they appear for personal hearing". However, I find that the *appellant* in the present appeal has contended that they had filed the detail reply to SCN vide FORM-GST-RFD-09 dated 17.06.2022 under Reply Reference No.ZP2406220084819.

4(ii). In view of above facts, I find that the refund claim is rejected for the reason that the *appellant* failed to comply to SCN and also not appear for personal hearing before the *adjudicating authority*. However, I find that the *appellant* in the present appeal proceedings produced the copy of reply to SCN submitted by them under FORM-GST-RFD-09 dated 17.06.2022 under Reply Reference No.ZP2406220084819. Further, the appellant has submitted in their submission that they have explained in the said reply to SCN under RFD-09 that in new utility there is no such facility to mention multiple FIRC against same invoice and accordingly, due to limitation they could not link multiple FIRC against the same invoice. In all three cases mentioned in the subject SCN, are the instances where there are more than one FIRC against one invoice issued by them. Further, detailed table showing invoice number and multiple FIRC against the same was produced in reply to SCN.

4(iii). Considering the foregoing facts, I find that in the present matter the refund claim is rejected on the ground that "claimant has neither filed reply to the SCN nor did they appear for personal hearing". In this regard, I



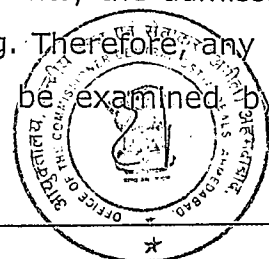
have referred the Rule 92(3) of the CGST Rules, 2017, same is reproduced as under :

*(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, 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". However, in the present matter, I find that the *impugned order* is issued without being heard the 'Appellant' and without considering the documents submitted by appellant with refund application as well as without considering the reply of appellant in respect of subject 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 considering the *appellant's* reply to SCN and 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 appearing for PH and non submission of reply/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 the Rule 89 of the CGST Rules, 2017 read with 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 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.

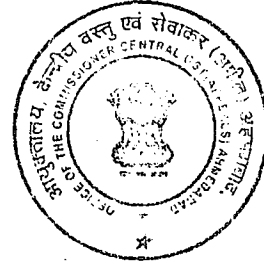

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 27.03.2023

Attested


(Dip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad
By R.P.A.D.



To,
M/s. Prodigy Software Ltd.,
103, Shapath-II, Opp. Rajpath Club,
S. G. Highway, Ahmedabad - 380 054

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/Asstt. Commissioner, CGST, Division-VII, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

