



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- 20220664SW000000B6C2

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1305/2021 -APPEAL / 2252 - 2257

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-72/2022-23**

दिनांक Date : **29-06-2022** जारी करने की तारीख Date of Issue : **30-06-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZV2403210142159 DT. 09.03.2021**

issued by Deputy Commissioner, CGST, Division VIII (Vejalpur), Ahmedabad South

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

M/s. Zuru Tech India Private Ltd. 4th Floor, 407, Mauryansh Elanza,

Shyam Crossroad, 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 .

Received by Vishal Singh
Date - 4-7-22
M-No → 9033287096



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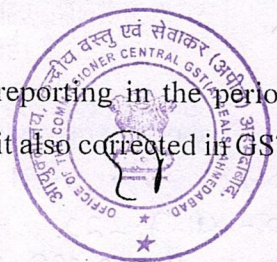
ORDER IN APPEAL

M/s.Zuru Tech India Private Ltd 4th Floor, 407, Mauryansh Elanza, Shyam Crossroad, Satellite, Ahmedabad 380 015 (hereinafter referred to as the appellant) has filed the present appeal on dated 5-7-2021 against Order No.ZV2403210142159 dated 9-3-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, CGST, Division VIII (Vejalpur), Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AABCZ0695A1ZL has filed refund claim for refund of Rs.65,025/- on account of ITC on export of goods and services without payment of tax for the period October 2018 to January 2019. The appellant was issued show cause notice reference NO.ZQ2412200064268 dated 21-12-2020 for rejection of refund on the ground that as per Annexure B ITC of period other than claimed period and ITC which is not reflecting in GSTR2A is also claimed. Maximum eligible ITC as per Annexure B is Rs.34279/- ; the zero rated supply and adjusted turnover is not calculated as per GSTR3B and as per Rule 89 (4) of CGST Rules, maximum refund of Rs.10478/- is admissible. The appellant filed reply to show cause notice in Form GST RFD 09 reference No.zq2412200064268 dated 21-12-2020. The adjudicating authority vide impugned order sanctioned refund of Rs.16,158/- and held that refund of Rs.48,867/- is not admissible on the ground that reply to show cause notice not found satisfactory and that as per revised Annexure B submitted by the tax payer the maximum refund amount if Rs.16,158/-.

3. Being aggrieved the appellant filed the present appeal on the following grounds:

- i. The adjudicating authority has grossly erred in Law by issuing partial refund against refund claim for Rs.65025/- by not considering the facts presented in reply to show cause notice and by not considering the provisions of Rule 89 (4) of CGST Rules, 2017 for calculation of turnover of zero rated supply of services.
- ii. The adjudicating authority has not gone into the facts of the case and submission made by them that the turnover of zero rated supply of services is Rs.76,27,584/- as per the provisions of Rule 89 (4) of CGST Rules, cited in point No.6 and alternatively as per GSTR3B the turnover of zero rated supply of services is Rs.46,42,319/-. As the appellant's turnover during the period of application include only export supply and not any domestic supply, ultimate impact on eligible refund claim will remain unchanged.
- iii. The adjudicating authority has not considered the turnover of zero rated supply, missed for reporting in GSTR1 of December 2018 ie Rs.32,23,341/- originally filed for refund calculation even through duly considered by it in adjusted total turnover calculation ie Rs.46,42,319/- (including export turnover of Rs.32.23.341/- and Rs.14,18,978/- for the tax period of December 2018 and January 2019 respectively.
- iv. The adjudicating authority has not considered the fact that non reporting in the period December 2018 was clerical mistake on the part of appellant which it also corrected in GST



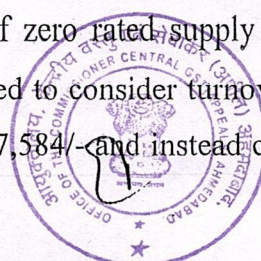
Annual Return for FY 2018-2019 such rejection of refund on such ground will render hardship to them

- v. The adjudicating authority has not considered the above facts and in concluding maximum eligible refund as per Rule 89 (4) of CGST Rules, Rs.10478/- as per SCN
- vi. The adjudicating authority has conveniently concluded without base that the partial refund is inadmissible and issued refund rejection order
- vii. The adjudicating authority has not followed the settled principle of substance over form and not given the weightage to genuineness of the refund claim.
- viii. In view of above submissions the appellant contended that the order of the adjudicating authority being contrary to the facts and Law deserve to be deleted and requested to grant full amount of refund.

4. Personal hearing was held on dated 30-5-2022. Shri Sandip Gupta authorized representative appeared on behalf of the appellant on virtual mode. He stated that they have nothing more to add to their written submission till date.

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. In this case the refund claim filed by the appellant was rejected due to unsatisfactory reply to the show cause notice. I find that the appellant has filed reply to show cause notice in Form GST RFD 09 reference No.ZQ2412200064268 dated 21-12-2020 wherein they had filed reply along with various Annexures and returns. However, the adjudicating authority has neither recorded any discussion on the reply nor recorded the reason as to why the reply is unsatisfactory. As per Rule 92 (3) of CGST Rules, 2017, it is statutory requirement to consider the reply filed to the show cause notice and to record reasons in writing for rejection of claim. In the subject case it is very well evident that the above procedures were not adhered by the adjudicating authority before rejecting the refund claim. Therefore, on this ground itself, I find the impugned order is a non-speaking order and bad in Law.

6. I find that in this case the claim was made for refund of ITC on export of services made without payment for Rs.65,025/- under Rule 89 (4) of CGST Rules, taking into account the turnover of zero rated supply of services and adjusted total turnover at Rs.76,27,584/- and Net ITC of Rs.65,025/-. However in the show cause notice issued to the appellant the turnover of zero rated supply was taken at Rs.14,18,978/-, adjusted total turnover at Rs.46,42,319/-, Net ITC at Rs.34,279/- and accordingly the admissible refund was arrived at Rs.10,478/-. In reply to show cause notice the appellant has submitted revised Annexure B wherein the eligible ITC was revised to Rs.52,861/-. Accordingly, considering the revised ITC, the adjudicating authority taking into account the turnover of zero-rated supply and adjusted total turnover as above, has arrived the admissible at Rs.16,157/-. Regarding turnover of zero rated supply of services, the appellant contended that the adjudicating authority has failed to consider turnover of zero rated supply of services in terms of Rule 89 (4) which is Rs.76,27,584/- and instead considered the value as per GSTR3B.



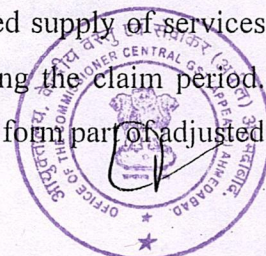
7. I find that as per clause (D) of Rule 89 (4) of CGST Rules, 2017, the turnover of zero rated supply of services is defined as under:

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

8. In the subject case the adjudicating authority has taken value of zero rated supply shown in GSTR3B returns as turnover of zero rated supply of services and adjusted total turnover for arriving the admissible refund, which I find is factually incorrect and not in accordance with definition given under clause (D) of Rule 89 (4). In case of zero rated supply of services, the value shown in GSTR3B returns has no relevance and turnover of zero rated supply of service will be as per definition given under Rule 89 (4) (D) above. During appeal the appellant has submitted details of payment received during the claim period for zero rated supply of services and amount received in advance for which provision of services is not completed and amount received in advance for which provision of services is completed. As per the said details the turnover of zero rated supply of services comes to Rs.76,27,584/-. Therefore, I have no hesitation to hold that the appellant has correctly taken turnover of zero rated supply of services which is in accordance with clause (D) of Rule 89 (4) of CGST Rules, 2017. Accordingly, I find that the adjudicating authority has wrongly taken the value shown in GSTR3B return towards turnover of zero rated supply and adjusted turnover and thereby wrongly rejected the refund claim to the extent of Rs.48,867/-.

9. I further find that as per definition given under clause (E) of Rule 89 (4) the "Adjusted Total Turnover" is the aggregate value of "Turnover in a State or Union Territory", as defined in Section 2(112) of CGST Act and turnover of zero-rated supply of services determined in terms of clause (D) and non-zero rated supply of services excluding turnover value services and value of supplies under clause (b) (i) and (ii). The "Turnover in a State or Union Territory" defined in Section 2(112) of CGST Act, covers aggregate value of all interstate and intra state supply of taxable/exempt goods and services and also exports goods and services. Among them, the value of services and value of supplies under clause (b) (i) and (ii) are excluded in the definition of adjusted total turnover. The net effect is that the adjusted total turnover will cover only the aggregate of value of all kinds of supply of goods plus value of zero rated supply determined in terms of clause (D) and value of non zero rated supply of services. Therefore, in cases where only zero rated supply of services is made, the value of zero rated supply determined in terms of clause (D) of Rule 89 (4) will only form part of adjusted total turnover in the formula. In the subject case as per GSTR3B returns, I find that except zero rated supply of services there was no supply of goods or non zero rated supply of services made during the claim period. Therefore, the turnover of zero rated supply determined as per clause (D) only will form part of adjusted



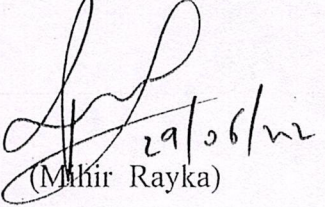
turnover. Apparently, in such instance both the turnover value of zero rated supply of services and adjusted total turnover will be same which in the subject case is Rs.76,27,584/-.

10. I further find that the appellant has already revised the eligible Net ITC at Rs.52,861/-. Therefore, taking into account the turnover of zero rated supply of services and adjusted total turnover at Rs.76,27,584/-, the eligible amount of refund comes to Rs.52,861/-. Out of it, since the refund of Rs.16,158/- was already sanctioned to the appellant vide impugned order, the appellant is entitled for balance refund of Rs.36,703/- only.

11. In view of above, I hold that the impugned order passed by the adjudicating authority to the extent rejecting refund taking into account the turnover of zero rated supply of services and adjusted total turnover as per value shown in GSTR3B is not legal and proper and deserve to be set aside. Therefore, I allow this appeal with consequential benefit to the appellant. I further order that any claim of refund made in consequence to this Order may be dealt with in accordance with provisions of CGST Act and Rules, framed thereunder. Accordingly, I set aside the impugned order and allow this appeal.

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


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


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


(Sankara Raman B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad
By RPAD

To,

M/s.Zuru Tech India Private Ltd
4th Floor, 407, Mauryansh Elanza,
Shyamal Crossroad, Satellite, Ahmedabad 380 015

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division VIII (Vejalpur), Ahmedabad South.
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

