



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20230964SW000000C4B2

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1708/2023 -APPEAL /2023-80

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-120/2023-24**  
दिनांक Date : **25.09.2023** जारी करने की तारीख Date of Issue : **30.09.2023**

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original **ZE2401230205426 DT. 17.01.2023** issued by The Assistant Commissioner, CGST, Division-VI, Ahmedabad South

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

Appellant	Respondent
M/s. IKOU Consulting, (Legal Name: Sonali Siddharth Shah), 15, Nishant-2, Opp. Nehru park, Jodhpur, Ahmedabad-380015 (GSTIN:24BISPS7145D1ZX)	The Assistant Commissioner, CGST, Division-VI, Ahmedabad South

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



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

**M/s. Ikou Consulting**, 15, Nishant-2, Opposite Nehru Park, Jodhpur, Ahmedabad-380015 (hereinafter referred as '*Appellant*') has filed the present appeal against the Refund Sanction/Rejection order in the form RFD-06 bearing No. ZE2401230205426 dated 17.01.2023 (hereinafter referred as *impugned order*) passed by the Assistant Commissioner, CGST, Division - VI, Ahmedabad South (hereinafter referred as '*adjudicating authority*').

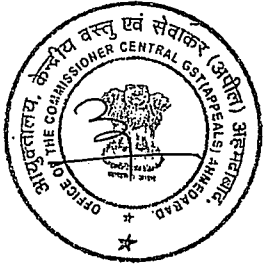
2. Briefly stated the facts of the case is that the '*Appellant*' is holding GST Registration - GSTIN No. 24BISPS7145D1ZX, has filed refund application vide ARN No. AA2411220111454 dated 04.11.2022 amounting to Rs. 4,880/- for the period August 2022 in the category of Any Other (Specify) under Form GST RFD-01. During the verification of refund claim some discrepancies have been observed accordingly after a SCN vide RFD-08 No. ZH2412220371148 dated 28.12.2022 was issued to the appellant, with following remarks:

*that the claimant had filed refund claim on the grounds that they have mistakenly paid interest of Rs. 4880/- for delayed payment for the year 2017-18 on the basis of notice received by them from department, however they were not liable to pay the same as they have taken registration w.e.f 14.06.2019. Therefore, they have filed the present refund application seeking refund of the amount so paid of Rs. 4880/-.*

- *That the matter was being enquired with the concerned range and was revealed that initially a demand notice was issued for the period of 2017-18 for payment of interest amounting to Rs. 4880 /- on delayed payment. However, subsequently, a corrigendum to the said demand notice was issued to the said claimant wherein interest amounting to Rs. 6359/- has been demanded for the period 2019-20 to 2021-22. Further, it was informed by the concerned range that the said demand of Rs. 6359/- has not been paid by the claimant till date.*

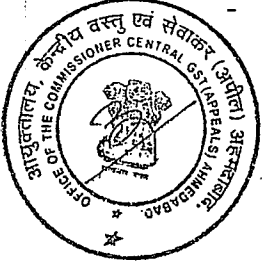
3. Further, the adjudicating authority had rejected the refund claim amounting to Rs. 4,880/- with the following observations:

- *That the claimant neither filed reply to the said SCN nor attended the personal hearing in the matter;*
- *In absence of any reply to the said SCN dated 28.12.2022 from the claimant, the refund claim filed by the claimant is liable for rejection.*



3. Being aggrieved with the 'impugned order' the appellant have filed the present appeal on 01.05.2023 on the following grounds:

- The appellant had received notice from GST department on 05-08-2022 regarding payment of interest liability under section 50 of CGST Act 2017 for delay in filing GSTR 3B returns of F.Y 2017-18. According to the notice the appellant had discharge interest liability of Rs.4,880/- and offset the same through DRC-03 on 29-08-2022.
  - The department had issued notice regarding interest payment for delay filing GSTR 3B for F.Y 2017-18. The appellant was not registered under GST in F.Y 2017-18. The notice issued by the department was not correct.
  - Later, the appellant realized that date of registration of the firm was 14-06-2019 and was not liable to pay interest of 2017-18.
  - On 30-08-2022 a corrigendum notice was received to the appellant by department stating that the said Interest amount will be read as interest of F.Y 2019-20 to 2021-22.
  - The fact that should be considered here is that the date of original notice issued is 05-08-2022 and the time to reply as mentioned in the notice was one week which ends on 13-08-2022. The department issued corrigendum on 30-08-2022 stating that the interest is outstanding from appellant side and the same will be set as interest of F.Y 2019-20 to F.Y 2021-22 while appellant had already filed DRC-03 on 29-08-2022.
  - The department had issued the Show Cause Notice on 28-12-2022 stating that appellant is liable to pay unpaid interest for the period of 2019-20 to 2021-22 of Rs.6,359/-.
- The above show cause notice was issued without considering genuine facts of the case. If the corrigendum states that the interest will be adjusted then how a show cause notice be issued to pay interest of Rs. 6,359/- to appellant. The department has been neglecting the fact that the date of Registration of the firm is 14-09-2019 and notice issued was incorrect.
- Due to unavoidable circumstances the Show cause notice was not replied by the appellant. The department rejected the refund of the said DRC-03 through order No: ZE2401230205426 dated 17-01-2023.
  - Now the appellant had paid interest and offset the same for F.Y 2019-20 to F.Y 2021-22 of Rs. 6,359/-. The appellant has paid due interest for the particular period i.e Rs: 6,359/- vide DRC-03 bearing ARN: AD2402230161004, AD240223016097J, AD240223016093R. Also appellant has paid interest by mistakenly selecting F.Y 2017-18 amounting Rs. 4,880/-. For F.Y 2017-18 vide DRC-03 bearing ARN:



AD240822012120W. The appellant hereby request you to issue refund of DRC-03 bearing ARN: AD240822012120W.

On the basis of submitted documents along with this appeal, the appellant requested to provide an opportunity of being heard before deciding the case and to kindly consider the above and grant us refund for the matter.

**Personal Hearing:**

4. Personal Hearing in the matter was held on 25.08.2023 wherein Mr. Arpan A. Yagnik, C.A., appeared on behalf of the 'Appellant' as authorized representative. During P.H. he had submitted that they were not registered in the financial year 2017-18 and mistakenly the department has raised the demand of interest of Rs. 4,880/- which they have paid, again the corrigendum was issued on 30.08.2022 of Rs. 6355/- which also paid and filed refund of Rs. 4,880/- which was rejected on the ground of not filing reply of SCN. In this regard it is submitted that no personal hearing was granted and order was issued in violation of natural justice. In view of above requested to allow appeal.

**Discussion and Findings :-**

I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is (i) whether the appeal has been filed within the prescribed time-limit and (ii) whether the refund claim filed by the appellant is allowed or not.

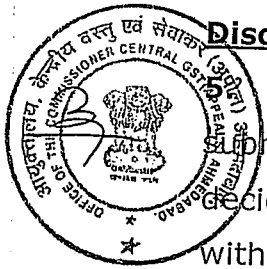
6. First of all, I would like to take up the issue of filing the appeal and before deciding the issue of filing the appeal on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:

**SECTION 107. Appeals to Appellate Authority.** — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) .....

(3) .....

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within



*the aforesaid period of three months or six months, as the case may be, allow it to be presented within a **further period of one month.***

**7(i).** I observed from the submission of appellant that in the instant case the appeal has been filed online on 01.05.2023 and submitted the copy of order appealed against, within 7 days of filing appeal. Accordingly, in light of provisions of Rule 108 of the CGST Rules, 2017 I observed that in the instant case the appeal has been filed on 01.05.2023 i.e. appeal filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. I find that though the delay in filing the appeal is condonable only for a further period of one month provided that the appellant was prevented by sufficient cause from presenting the appeal is shown and the delay of more than one month is not condonable under the provisions of sub section (4) of Section 107 of the Central Goods and Service Tax Act, 2017.

**7(ii).** In the present matter, the "*impugned order*" is of 17.01.2023 so, the normal appeal period of three months was available up to 17.04.2023 whereas, the present appeal is filed on 01.05.2023. In this regard, I find that in the present matter the appellant has submitted the application for condonation of delay and requested to condone the delay. In light of Section 107(4) of the CGST Act, 2017 by condoning the delay of one month the last date for filing of appeal comes to 17.05.2023. In the present matter the appeal is filed on 01.05.2023. Accordingly, in view of above request of appellant to condone the delay in filing present appeal, I hereby condone the delay. Accordingly, the present appeal is considered to be filed in time.

Accordingly, I am proceeded to decide the case.

**8(i).** I have carefully gone through the facts of the case available on records, submissions made by the '*Appellant*' in the Appeal Memorandum. I find that the '*Appellant*' had preferred the refund application vide ARN No. AA2411220111454 dated 04.11.2022 amounting to Rs. 4,880/- for the period August 2022 in the category of Any Other (Specify) under Form GST RFD-01. In response to said refund application a Show Cause Notice was issued to the appellant on 28.12.2022 proposing rejection of refund claim. Thereafter, the said refund claim was rejected by the *adjudicating authority* vide *impugned order* with Remark "*that the*



*claimant neither filed reply to the said SCN nor attended the personal hearing in the matter and in absence of any reply to the said SCN dated 28.12.2022 from the claimant, the refund claim filed by the claimant is liable for rejection.*

**8(ii).** In the instant case, I find that department had issued notice to the appellant on 05-08-2022 regarding payment of interest liability under section 50 of CGST Act 2017 for delay in filing GSTR 3B returns of F.Y 2017-18. According to the notice, the appellant had discharge interest liability of Rs.4,880/- and offset the same through DRC-03 on 29-08-2022, however the appellant was not registered under GST in F.Y 2017-18, as the date of registration of the firm of the appellant was 14-06-2019. Hence, I find that the notice issued by the department was not correct.

**8(iii).** Further, I find that on 30-08-2022 a corrigendum notice was issued to the appellant by department stating that the said interest amount i.e. Rs. 4,880/- will be read as interest of F.Y 2019-20 to 2021-22. However, the fact is that the date of original notice issued is 05-08-2022 and the time to reply as mentioned in the notice was one week which ends on 13-08-2022 and the department issued corrigendum on 30-08-2022 stating that the interest is outstanding from appellant side and the same will be set as interest of F.Y 2019-20 to F.Y 2021-22. However, the appellant had already paid the interest amount i.e. Rs. 4,880/- through DRC-03 on 29-08-2022. Further I find, that the department had erred in issued the Show Cause Notice on 28-12-2022 stating that appellant is liable to pay unpaid interest for the period of 2019-20 to 2021-22 of Rs.6,359/- as the corrigendum states that the interest of Rs. 4,880/- will be adjusted then how a show cause notice be issued to pay interest of Rs. 6,359/- to appellant. Further, I find that the appellant had also paid due interest for the particular period i.e Rs. 6,359 vide DRC-03 bearing ARN: AD2402230161004, AD240223016097J, AD240223016093R which has been raised in said SCN.

**9(i).** I find that the refund claim is rejected for the reason that the *appellant* failed to reply to the SCN dated 28.12.2022. However, I find that while filing Form GST APL-01 and during personal hearing the *appellant* has stated that due to unavoidable circumstances the SCN was not replied by the appellant. However, I find that the appellant have paid due interest for the particular period i.e Rs. 6,359 vide DRC-03 bearing ARN: AD2402230161004, AD240223016097J, AD240223016093R. Also appellant has paid interest by mistakenly selecting F.Y 2017-18 amounting



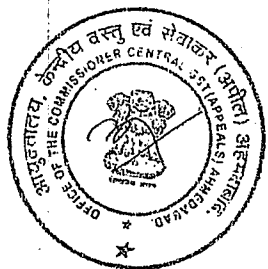
Rs. 4,880/- For F.Y 2017-18 vide DRC-03 bearing ARN: AD240822012120W.

**9(ii).** Considering the foregoing facts, 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 impugned order and grounds of appeal, I find that the appellant has submitted the reply of SCN, while filing appeal in this office. The appellant had also paid due interest for the particular period i.e Rs. 6,359 vide DRC-03 bearing ARN: AD2402230161004, AD240223016097J, AD240223016093R which was raised in SCN.



**10.** In view of above, I find that the *adjudicating authority* has not followed the principle of natural justice in passing the *impugned order* vide which rejected the refund claim without considering the *appellant* facts of the case, documents 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.

**11** 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. 4,880/-. 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 for verification of the facts, who shall verify the facts and pass order accordingly.

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.

Attested

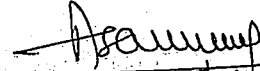
(Sandheer Kumar)  
Superintendent (Appeals)

By R.P.A.D.

To,  
M/s: Ikou Consulting,  
15, Nishant-2, Opposite Nehru Park,  
Jodhpur, Ahmedabad-380015.

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

  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)  
Date: 25.09.2023

