



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- 20231264SW0000220930

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1693/2023 -APPEAL *Jan 21 - 26*

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 161 /2023-24

दिनांक Date : 22.11.2023 जारी करने की तारीख Date of Issue : 01.12.2023

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 No. ZK2402230221850 DT. 15.02.2023 issued by The Assistant Commissioner, CGST & CX, Div-VI, Ahmedabad South.

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

Appellant	Respondent
M/s. S&P Capital IQ (India) Private limited, S and P House behind Divya Bhaskar, Opp. Orchid Woods, Corporate Road Ahmedabad-380051	The Assistant Commissioner, CGST & CX, Div-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) 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 :-**

This appeal has been filed under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "*the Act*") by **M/s. S&P Capital IQ (India) Pvt Ltd.**, S and P House, Corporate Road, Ahmedabad, Gujarat – 380051 (hereinafter referred to as "**Appellant**") against the Order No. ZK2402230221850 dated 15.02.2023 (hereinafter referred to as "**Impugned Order**") passed by the Assistant Commissioner, Division-VI, CGST, Ahmedabad South (hereinafter referred to as "**the Adjudicating Authority/Proper Officer**").

2. The Appellant is engaged in providing support services of software products for Financial Databased under GST No. 24AACCS8657G1Z5. They had filed refund claim in form RFD-01 of the tax paid on export of services for the period March'2021 amounting to Rs.3,82,55,808/- vide ARN No.AA241122098000X dated 25.11.2022 under Section 54 of CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

A Show Cause Notice in form RFD-08 vide reference No. ZM2401230371648 dated 30.01.2023 was issued to the appellant calling for documents and reasons for ;

- (i) Variance in value of export invoice No.5/2020-2021 dated 31.03.2021 with the FIRC/BRC. The date of FIRC/BRC being prior to that of issuance of export invoice;
- (ii) Copy of Bank Statement containing details of credit of foreign remittance against export invoice no. 5/2020-21 dated 31.03.2021;
- (iii) copy of Export Invoice No.5/2020-21 dated 31.03.2021.

4. The adjudicating authority vide form RFD-06 dated 15.02.2023 rejected the refund claim of the appellant on the following grounds;

- a. Difference of Rs.4,30,11,796/- in the value of invoice and value of e-BRC. Further, e-BRC dated is before issuance of invoice No.5/2020-21 dated 31.03.2021. Hence there is no co-relation between the export invoice and FIRC/BRC.
- b. The appellant failed to produce copy of export invoice No.5/2020-21 dated 31.03.2021 and bank statement containing details of credit of foreign remittance of export invoice no.5/2020-21 dated 31.03.2021.

5. Aggrieved by the impugned order, the appellant preferred appeal on 11.05.2023 on the following grounds;

i. The impugned order is liable to be set aside to the extent of refund rejection as it has been passed without any proper legal basis and appreciation of facts/submissions made by the appellant.

ii. the appellant filed their reply to the SCN on 14.02.2023 along with requisite documents to the observations raised by the adjudicating authority in the show cause notice, which has not been considered by the adjudicating authority while passing the impugned order.

iii. the details of the remittances received by the appellant in USD along with the reconciliation of the invoice no.5/2020-21 dated 31.03.2021 with e-BRC No.CHAS0INBX01220016696 and CHAS0INBX01220016697 was provided as per the following tabulation;-

Realisation amount in USD	Taxable Value in USD	Taxable value in INR - as per invoice (A)	IGST in INR - as per invoice (B)	Invoice value in INR (A+B)
29,02,016	29,02,016	21,25,32,267	3,82,55,808	25,07,88,075

Realisation amount against invoice No. 5/2020-21 in INR (C)	Difference on account of foreign exchange loss (D) (D=A-C)	Total Difference (B+D) IGST in INR + Foreign Exchange loss
20,77,76,279	47,55,987	4,30,11,796

iv. thus as per the table above, they have correctly received the remittance and difference of Rs.4,30,11,796/- is on account of foreign exchange difference and the tax amount charged on the invoice, not collected from the client in case of export of service with payment of tax.

v. a detailed reconciliation of realization of the invoice with e-BRC along with certificate from the practicing Chartered Accountant certifying the remittance has been enclosed with the appeal.

vi. that in the month of January, 2021 and February 2021 they had received an advance payment of Rs.20,77,76,279 against invoice no. 5/2020-21 dated 31.03.2021;



vii. that the appellant considered such advances for filing the instant refund claim with payment of tax as these advances were against the invoice no.5/2020-21 dated 31.03.2021 for which services were provided during the period of January 2021 to March 2021.

viii. that the refund period has been considered in the refund application with payment of tax basis of the date of invoice. The relevant provision;

"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;

that the adjudicating authority in his impugned order has observed that the appellant failed to produce the copy of the export invoice no.5/2020-21 dated 31.03.2021. In this regard there is no requirement under the GST law or Circular No.125/44/2019-GST dated 18.11.2019 to provide for copy of export invoice or copy of bank statement for the purpose of filing of the refund application. In spite of the same, the appellant had provided the copy of the relevant documents in its reply to SCN.

x. In favor of their contentions, the appellant has relied upon the case laws of (i) Tata Engineering & Locomotive Co. Ltd. Vs Collector of C.Ex., Pune (ii) T.T.Ltd., Vs UOI 2017 (iii) TRF Ltd. Commissioner of Central Excise and Service Tax etc.

xi. that they were not given an opportunity to be heard in person. With the above submissions, the appellant has prayed to

- a. Set aside the refund rejecting order dated 15.02.2023
- b. Allow refund claim amounting to Rs. 3,82,55,808/- in favor of them.

6. An opportunity of personal hearing was granted to the appellant on 29.09.2023 virtually. Mr. Arihand Sipani, appeared before me as authorized representative on behalf of the appellant and submitted that the adjudicating authority has rejected the refund claim mainly on the ground that no reply has been filed. In this regard it is submitted that

they have filed the reply on the portal. Further, there is no difference in value shown in invoice (whatever difference is there is due to tax amount and currency fluctuation). The amount shown in USD is received by them as per invoice. He further reiterated the grounds of appeal and requested to allow the appeal. Further, he stated that all refunds of past and subsequent period have been received by them.

DISCUSSION AND FINDINGS

7. I have carefully gone through the facts of the case and grounds of appeal made by the appellant, and the submissions made by them at the time of personal hearing and documents available on record. The limited point to be decided in the matter is whether the impugned order issued for rejection of refund claim for difference in invoice value and the value in BRC/FIRC, is legal and proper or otherwise.

8. 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.**

8.1 I observed that in the instant case that as against the *impugned order* of dated 15.02.2023, the appeal has been filed on 11.05.2023 i.e. appeal filed in the normal period prescribed under Section 107(1) of the CGST Act, 2017. I proceed further to decide the case.

9. I find that in the present case appeal is filed by the appellant against impugned order wherein refund of tax paid during exports amounting to Rs. 3,82,55,808/- has been rejected on the grounds that there is a difference between the invoice value and the value in the FIRC/BRC furnished by the appellant and the appellant had not provided copy of the invoice and bank statement as required under Rule 89 of the CGST Rules, 2017.

10. I find in the instant case, during personal hearing the appellant stated that they had received the entire export realization in advance during the month of January 2021 and February 2021 against the Invoice No.05/2020-21 dated


31.03.2023 through E-BRC's dated 08.01.2021 and 05.02.2021 and the same has been duly certified by their Chartered Accountant's certificate dated 08.05.2023. The difference amount of Rs. 4,30,11,796/- arose due to the fluctuation in the foreign exchange and the tax amount has not been received from their customer.

11. The appellant during personal hearing have stated that all refunds of past and subsequent period have been received by them, by which it is explicit that the adjudicating authority does not have any dispute in respect of the issue on which refund is claimed by the appellant.

12. As per Circular No.125/44/2019-GST dated 18th November, 2019 there is no requirement to provide for copy of export invoice or copy of bank statement for the purpose of filing of the refund application. The relevant para of the Circular wherein the required documents are to be submitted is provided below;-

"Annexure-A

List of all statements/declarations / undertakings/certificates and other supporting documents to be provided along with the refund application ;-



Sl No	Type of Refund	Declaration/Statement/ Undertaking/Certificates to be filed online	Supporting documents to be additionally uploaded
.....
	Refund of tax paid on export of services made with payment of tax	Declaration under second and third proviso to section 54(3)	BRC/FIRC/any other document indicating the receipt of sale proceeds of services
		Undertaking in relation to sections 16(2)(c) and Section 42(2)	Copy of GSTR-2A of the relevant period
		Statement 2 under rule 89(2)(c)	Statement of invoices (Annexure-B)
			Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period
			Self-Declaration regarding non-prosecution under sub-rule(1) of Rule 91 of the CGST Rules for availing provisional refund.

13. Further as per para-48 of Circular No.125/44/2019-GST dated 18th November, 2019 clarifications have been provided, extract of which is reproduced below;-

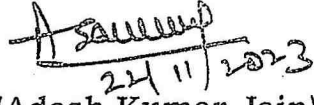
"48. It is clarified that the realization of consideration in convertible foreign exchange, or in Indian rupees wherever permitted by Reserve Bank of India, is one of the conditions for export of services. In case of export of goods, realization of consideration is not a pre-condition. In rule 89 (2) of the CGST Rules, a statement containing the number and date of invoices and the relevant Bank Realization Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case

of export of services whereas, in case of export of goods, a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices is required to be submitted along with the claim for refund. It is therefore clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon."

14. In view of the above facts and discussions, I hereby observe that the appellant had received the entire export realisations of invoice no. 5/2020-21 dated 31.03.2021 split in two e-BRCs in advance in the month of January'2021 and February'2021, and have rightly claimed the refund amounting to Rs. 3,82,55,808/-. Therefore, I hereby set aside the impugned order and allow the appeal filed by the appellant. I direct the adjudicating authority to grant refund to the appellant subject to verification of requisite documents. I also direct the appellant to submit all relevant documents with the Refund Sanctioning Authority.

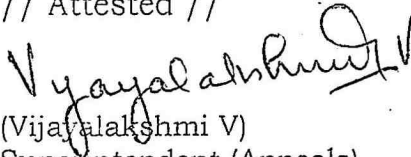
अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


24/11/2023
(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: .11.2023

// Attested //


(Vijayalakshmi V)
Superintendent (Appeals)

By R.P.A.D.

To

S&P Capital IQ (India) Pvt Ltd
S and P House, Corporate Road
Ahmedabad, Gujarat 380 051.

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



