



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal).

केंद्रीय जीएसटी अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजमार्ग, अम्बावाड़ी अहमदाबाद, ३८००१५

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20231264SW0000333B08

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPI/ADC/GSTP/3114/2023 -APPEAL 1949-32

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-OC-1740-23-24

दिनांक Date : 30.11.2023 जारी करने की तारीख Date of Issue : 08.12.2023

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. ZF2405230085297 dated 04.05.2023 issued by The Assistant Commissioner, CGST & CX, Div-VI, Ahmedabad South.

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

Appellant	Respondents
M/s Sophos Technologies Private Limited, Sophos house, Saigulshan complex, beside white house, Panchavati crossroad, Ahmedabad, Gujarat, 380006	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 दाखल 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, 2017, in the cases where one of the issues involved related to place of supply as per Section 107(6) 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 demanded 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 APPL-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 APPL-05 online.	
(i)	Appeal to be filed before Appellate Tribunal under Section 112(1) of the CGST Act, 2017 shall be accompanied by the following documents: (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the order appealed against, as 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 08.08.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order of the Appellate Tribunal entered in the office, whichever is later.	
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने में संबंधित व्यक्तिक, विस्तृत और शीघ्रता से प्रतिक्रिया के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest information 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 Sophos Technologies Private Limited, Sophos house, Saigulshan complex, beside white house, Panchavati crossroad, Ahmedabad, Gujarat, 380006, (hereinafter referred to as the 'Appellant') has filed the present appeal against the Order No. ZF2405230085297 dated 04.05.2023 (hereinafter referred to as the 'impugned order') rejecting refund claim amounting to Rs. 1,67,94,804/- passed by the Assistant Commissioner, CGST & C. Ex., Division-VI, Ahmedabad South Commissionerate (hereinafter referred to as the 'adjudicating authority').

2. Briefly stated the facts of the case are that the 'Appellant' is holding GST Registration No. 24A4CCC7727M1ZF and engaged in distribution of IT Security products and provision of IT Services. The Appellant had, in accordance with Section 54 of CGST Act, 2017 read with rule 96 of CGST Rules, 2017 filed refund application for INR 1,67,94,804/- in respect of "Refund of unutilized input tax credit on account of export of services without payment of tax" for the month of March 2019 vide FORM-GST-RFD-01 (ARN: AA240323025803N) dated 09 March 2023.

3. Show Cause Notice in this regard in FORMGST-RFD-08 bearing reference no ZL2404230225741 dated 18 April 2023 had been issued to the appellant as to why the refund application filed by Appellant should not be rejected on the following queries;

Whether refund application has been filed within the timelines specified in Section 54 of CGST Act, 2017;

- Difference of zero-rated turnover between statement 3 and FIRC;
- Explanation whether payment has been received in advance or not.

4. In response to the above SCN, the Appellant had submitted a detailed reply in Form RFD 09 dated 01 May 2023 and provided the necessary explanation/clarification as follows:

- Refund application has been filed within the time limit specified under GST Law relying upon the relevant legal provisions and facts of the case.
- There is no discrepancy in zero rated turnover reported in Statement 3 and FIRC as entire amount of foreign currency has been received.
- All the export proceeds are realized after the issuance of invoice and there are no instances of advance receipt.

5. Pursuant to the said submission, the Adjudicating Authority has passed the impugned order rejecting the entire refund claim of the Appellant on the contentions that the Appellant has filed the refund application after the expiry of two years from the relevant date i.e., date of invoice.

6. Being aggrieved with the impugned order the appellant has filed the present appeal on 03.08.2023 mainly on the following grounds:
- i. The Appellant submitted that the impugned order has been passed by the Adjudicating Authority in haste and without application of mind. Further, the Adjudicating Authority has not considered the detailed reply filed in response to the SCN.
 - ii. Further, the Appellant referred Para 14 of the impugned order wherein the Adjudicating authority alleged that the amount of foreign currency received in FIRC is advance by merely relying upon the narration of the purpose code. In this regard, the Appellant submitted that whether the foreign remittance has been received as advance or against any invoice, it cannot be decided merely based on purpose code. The Adjudicating Authority should have taken into consideration the other documents such as invoice, correlation of the FIRC with export invoices, submission of the Appellant and Contract's terms and conditions w.r.t. payment to derive the conclusion. Therefore, the Appellant submitted that the Adjudicating authority has passed the impugned order without verifying and understanding the documents and submission in detail, therefore the same should be set aside.
 - iii. The appellant not agree with the Adjudicating Authority's claim that the amount received on March 9, 2023, is an advance for invoices dated December 28, 2018, January 30, 2019, and February 28, 2019. The appellant submitted that if considered an advance, all invoices should bear dates post-March 9, 2023. However, a contradictory view has been formed by Adjudicating Authority by considering the date of invoice prior to the date of receipt as relevant date even after alleging that the said receipt in FIRC as advance.
 - iv. The Appellant submitted that the Adjudicating Authority has ignored to address the submissions made by the Appellant in the reply to SCN dated 01 May 2023 while passing the impugned order and being silent on the submissions which brings out the deficiencies in the impugned order. In this regard, the appellant referred the Master Circular on SCN, Adjudication and Recovery by file no. 105/03-2017-CX, dated March 10, 2017 which prescribes the manner of adjudication.
 - v. The Appellant submitted that the impugned order has been passed without application of mind wherein no proper reasoning has been given with respect to the non-consideration of the submission made by the Appellant and consequently the impugned order should be set aside as legally unsustainable.



vi. The Appellant referred Section 54(1) of the CGST Act, 2017 and Explanation 2(c) of section 54 of CGST Act, 2017 which defines 'relevant date' and submitted that refund application in case of export can be filed within a period of 2 years from the date of first receipt of export of services in convertible foreign currency where the supply of service is completed prior such receipt. In the instant case, the Appellant has a contractual agreement with the customer to receive the payment against export of services within a period of 90 days from the date of issuance of invoice. Thus, relevant date of 2 years is to be considered from the date of first receipt of payment in convertible foreign currency as per the Explanation 2(c)i) of Section 54 of the CGST Act, 2017 on the ground that supply of services had always been completed prior to the receipt of consideration against such supply and there are no scenarios of advance receipt in the instant case.

vii. Further, the Appellant referred the Notification 13/2022-Central tax dated 05 July 2022 which states that the period between 1 March 2020 to 28 February 2022 shall be excluded for the purpose of computation of the period of limitation for filing refund applications under section 54 Or 55 of the CGST Act, 2017. The Appellant submitted that the refund application for the month of March 2019 has been filed within the time limit specified under section 54 of CGST Act, 2017. However, the Adjudicating Authority has rejected the refund application by referring to Explanation 2 (c) (ii) of Section 54 of CGST Act, 2017 which provides that if export proceeds are received in advance, then refund application is to be filed within a period of 2 years from the date of issuance of invoice. In the present case, the invoices considered for refund application are dated 28 December 2018, 30 January 2019 and 28 February 2019.

viii. The contention of Adjudicating Authority that the payment is received in advance is based on the purpose code mentioned in the inward remittance copy as 'Advance receipts against export contracts, which will be covered later by GR/PP/SOFTTEX/SDF - other than Nepal and Bhutan'.

ix. Considering the above fact, the Adjudicating Authority held that the refund application filed on 09 March 2023 is beyond the period of 2 years from the relevant date i.e., date of invoice (28 December 2018, 30 January 2019 and 28 February 2019) even after considering the Notification 13/2022-Central tax dated 05 July 2022 which excludes the period from 01 March 2020 to February 2022.



x. In this regard, the Appellant submitted that the same purpose code is provided for all the export invoices to the A/D bank even though all the receipts are related to the invoices issued prior to the date of receipt. Thus, there are no instance where company receives the convertible foreign currency in advance. In order to substantiate the aforesaid submission with documentary evidence, the Appellant has enclosed the copy of E-BRC along with corresponding SOFTEX Form, which establishes that the Appellant has received the consideration post issuance of export invoice. The appellant also submitted a table which represents the correlation of each export invoice with corresponding E-BRC and SOFTEX Form submitted before the STPI (Software Technology Park of India) Authority.

xi. The Appellant submitted that the payment against the export invoices has been received only after the issuance of invoice and accordingly the refund application has been filed within a period of 2 years from the relevant date i.e., date of first receipt in accordance with Section 54 of CGST Act read with Notification 13, 2012-Central tax dated 05 July 2022 and not from the date of invoice as alleged by the Adjudicating Authority in the impugned order. The Appellant submitted that the Adjudicating Authority has not considered the submissions of the Appellant in proper light and Impugned Order is legally unsustainable and deserves to be set aside on this ground alone.

Personal hearing in the matter was held on 09.11.2023. Sri Moulik Lakkar, CA and Ms. Nikita Jain, CA attended the hearing on behalf of the Appellant as representatives. They submitted that Id. Adjudicator Authority has passed the order without considering the facts on hand. It is mentioned in the O-I-O that it's an advance and on the other hand rejecting the refund on the ground of limitations stating that invoices are prior to advance. Therefore it is clear that the order is passed without considering the facts and rejected just to reject the claim without any logical or legal reasoning or facts. He/She further reiterated the written submissions and requested to allow their appeal.

DISCUSSION & FINDINGS:

8. I have carefully gone through the facts of the case, appeal memorandum, submissions made at the time of personal hearing. At the outset, I find that the *impugned order* was issued on dated 04.05.2023 and present appeal was filed on dated 03.08.2023 i.e. exactly of the three months time limit as prescribed under Section 107 of the CGST Act, 2017. Hence, I proceed further in deciding the case.

9. I find that in the instant case appeal is filed by the appellant against the impugned order wherein refund of accumulated ITC due to export without payment tax amounting to Rs. 1,67,94,804/- has been rejected by the adjudicating authority. The limited point to be decided in the matter is whether the rejection of refund claim amounting to Rs. 1,67,94,804/- for value is the FIRC is lesser than the value of the zero-rated turnover declared in Statement 3A and whether the payment is received in advance or not is proper or otherwise.

10. The grounds on which the appeal has been filed by the appellant there is no difference in the export realization received by them. Just a mere 15 USDs or so has been deducted being bank charges. Accordingly they have furnished tabulation detailing the value of the invoice, amount received by them through e-BRC along with number and date etc. Further, it has been submitted by them, that the value declared in statement-3 is in accordance with the value disclosed in respective GSTR-1 of the period prior to March'2019 as Export of services amounting to USD 37,25,151 and INR 26,16,76,109/- for which payment has been realized in the month of March'2019 as USD 37,25,151 and INR 25,58,79,591/-. The difference in INR value is merely on account of foreign exchange rate fluctuation. However, the adjudicating authority has rejected their refund claim mis-interpreting that there is a difference in the FIRC and Statement-3 furnished by them. I find from the assessee's contention and from the copies of the e-BRCs submitted correlating the invoices and softex form, the difference between the FIRC and the Statement-3 is due to fluctuation in foreign currency rates and deduction of bank charges in meagerly is justifiable.

11. Another issue, I would like to discuss is about relevant date which is one of grounds in the impugned order for rejection of the refund claim. The date of invoice vide which the export took place is 28.12.2018, 30.01.2019 and 28.02.2019. I would like to refer section 54(1) of the CGST Act, 2017 which provides that any person claiming refund of any tax, or any other amount paid by him, may make an application before the expiry of two years from the relevant date. The term 'relevant date' is defined under Explanation 2(c) of Section 54 of CGST Act, 2017, which states:

"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;

12. In view of the above, refund application in case of export can be filed within a period of 2 years from the date of first receipt of export of services in convertible foreign currency. In the instant case, the appellants in their written submissions, have stated that they have a contractual agreement with their customers to receive the payment of export of services within a period of 90 days from the date of issuance of invoice for the export of services. Thus, in the instant case the period of 2 years starts from the date of first receipt of payment received by them, which appears that in March 2019 they had received and accordingly the refund claim has been claimed with availing the benefit of Notification No.13/2022-Central Tax dated 05.07.2022 which states that the period between 1.3.2020 to 28.02.2022 shall be excluded for the purpose of computation of the period of limitation for filing refund applications under Section 54 or 55 of the CGST Act, 2017.

13. Further, if we don't go by the payment details in respect of arriving at *relevant date*, I find that the appellants in the present appeal have mentioned their date of invoice being 28.12.2018, 30.01.2019 and 18.02.2019. I find as per the Notification No. 13/2022-Central Tax dated 05.07.2022 issued by CBIC. 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.*

14. 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. I find that in the present matter the relevant date for filing the refund application as per the date of invoice, the due date falls anywhere between the month of December 2020 – February 2021 which is falling within the period of 01.03.2020 to 28.02.2022. Accordingly, in view of the view that the refund claim filed on 09.03.2023 for the month of March 2019 is well within the time limit prescribed under Section 54 of the CGST Act, 2017.

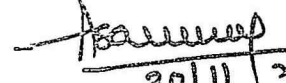
15. In view of the facts and discussions above, I allow the appeal of the "Appellant" with a direction to the proper officer to consider the submissions of appellant and process the refund application after due verification of documents, details of appellant as directed in Para 10



above. The 'Appellant' is also directed to submit all the relevant documents, submission before the refund sanctioning authority and the refund Sanctioning Authority shall verify the facts again and pass order accordingly.

16. अपीलकर्ता द्वारा दर्ज की गई शर्तों का निपटारा उपरोक्त तरीके से किया जाता है।

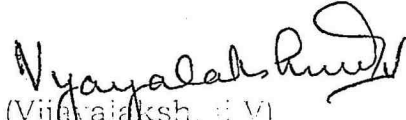
The appeal filed by the *appellant* stands disposed of in above terms.


30/11/2023
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: .11.2023

// Attested /


(Vijayalakshmi V)
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,
M/s. Sophos Technologies Pvt. Ltd.
Sophos House, Saigulshan Complex
Beside White House,
Panchavati Cross Road
Ahmedabad
Gujarat -380 006

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-VI, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File.

