



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.

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DIN- 20231264SW000000BD56

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2732/2023 -APPEAL / गुस्ट - ४६

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 175/2023-24

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. ZJ2405230180242 dated 11.05.2023 issued by The Assistant Commissioner, CGST & CX, Div-I, Ahmedabad South.

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

Appellant	Respondents
M/s Innovior Research Private Limited , B-1215,1216,1217, Sun West bank, Opp City Gold cinema, Ashram Road, Ahmedabad, Gujarat, 380009	The Assistant Commissioner, CGST & CX, Div-I, 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.
(iii)	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 APPEALBrief 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. Innovior Research Private Limited, B-1215, 1216, 1217 Sun West Bank, Opp. City Gold Cinema, Ashram Road, Ahmedabad, Gujarat 380 009** (hereinafter referred to as "**Appellant**") against the Order No. ZJ2405230180242 dated 11.05.2023 (hereinafter referred to as "**Impugned Order**") passed by the Assistant Commissioner, Division-1, CGST, Ahmedabad South (hereinafter referred to as "**the Adjudicating Authority/Proper Officer**").

2. Brief facts of the case are the appellant is engaged in the business of supply of Zero Rated Services in the field of market search and specialization in providing comprehensive qualitative and quantitative research services under GST Registration No. 24AAEC14738A1ZZ. The appellant filed refund claim of un-utilised Input Tax Credit for the period October'2021 to March'2022 on account of Export of Services without payment of Tax under Section 54(3)(i) of CGST Act, 2017 read with Rule 89(4) of CGST Rules, 2017 amounting to Rs.7,16,873/- on 01.04.2023 in Form RFD-01.

Show cause notice in form GST-RFD-08 dated 20.04.2023 has been issued to the appellant stating that " The Statement under Rule 89(2)(c) of CGST Rules, 2017 is not attached". In reply vide GST-RFD-09 dated 20.04.2023 the appellant uploaded the required statement on the GSTN portal. The appellant had changed their POB address as amended in GST Registration w.e.f.15.07.2022 for which the amended certificate was issued on 26.08.2022. After issuance of show cause notice, the adjudicating authority through their officers conducted spot visit at old address at 407, 4th floor, Empire Hub, Ghodasar Cross Road, Ghodasar Ahmedabad Due to certain technical error new address was not appearing in the system www.chic.gst.gov.in and again the appellant was asked for applying for amendment of registration of POB. It was carried out by the appellant on 9.05.2023 and approval was received on 15.05.2023.

4. The adjudicating authority vide his impugned order rejected the refund claim of Rs.7,16,873/- on the following grounds;-

(i) *During the course of physical verification, it is found that the principal place of business does not exist as declared in their GSTN registration;*

(ii) The details of shipping bill/bill of export/export invoices are not mentioned in the statement submitted with the reply to the show cause notice;

(iii) In the instant case, the claimant has submitted copies of Certificate of Inward Remittance (FIRC) issued by the Citi-Bank along with copies of export invoices raised by the claimant. However, the FIRCs do not contain the details of the export invoices vide which the FIRCs can be co-related with the export of services claimed by the claimant. In the absence of the details of invoices in the FIRCs, it cannot be ascertained that FIRCs submitted are related to the particular invoice. Hence, the FIRCs submitted along with the claim cannot be treated as valid FIRCs which is required as per Rule 89(2) of CGST Rules, 2017;

(iv) The buyer of the services is are sister concern i.e., M/s. Innovior Research LLC (the appellant) and hence the same cannot be considered as an export of services in terms of Section 2(6)(v) of IGST Act, 2017 where the supplier of service and the receipt of service are not merely establishments of a distinct person;

(v) No address of the buyer is mentioned in the invoices. Only the country of origin name is mentioned i.e. U.S.A.

(vi) Description of services provided not mentioned in the invoice.

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

(i) It is being humbly submitted by the Appellant that the refund was rejected on the grounds which were originally not incorporated in the SCN hence the rejection order has travelled beyond the scope of SCN as stated in the statement of facts;



The Adjudication authority should not go beyond the scope of Show Cause Notice. In the case of Commissioner of Central Excise Vs. Ballarpur Industrial Ltd. - 2007 (215) ELT 489 (SC), the Hon'ble Supreme Court held that the Show Cause Notice is the foundation for adjudication of the matter. The order should be restricted to the allegations levelled in the Show Cause Notice. Similarly, in the case of Commissioner of customs Vs. Toyo Engineering India Ltd. - 2006 (201) ELT 513 (SC), the Hon'ble Supreme Court held that the Revenue should not have allowed to raise the issue first time in the order, particularly, when such ground/ allegations were not raised in the Show Cause Notice. It was held that the Department cannot travel beyond the scope of the Show Cause Notice;

(iii) It is well settled law that any action prejudicial to the Appellant is taken he should be heard in person and he should not be deprived the right of being heard and in the present case on hand its being clearly evident on records that the opportunity of being heard was never awarded to the Appellant;

(iv) Guidelines have also been issued by Board as per Instruction No. 03/2022-GT Dt. 14.06.2022 for processing of refund claims in GST which states that Principle of Natural Justice to be followed and for that detailed speaking order needs to be issued providing a basis for sanctioning or rejecting

a refund. From the available facts and rejection order it is established that the opportunity of being heard was not given before the Appellant's claim was rejected vide impugned order;

(v) The Appellant would like to refute all grounds categorically as under, Regarding conducting physical verification of the POB, as per provisions of Section 54 of the CGST Act, 2017 read with rules made there under, doesn't provide for any physical verification of the premises before sanctioning of any refund claim. In this regard it is submitted in the statement of facts that the Appellant had already amended the new address in their GST registration effective from 15.07.2022, however due to technical error in respondent's system the new address didn't reflect but the Appellant had provided copy of new registration immediately, still the refund is rejected on this ground which is beyond the provisions of Section 54 of CGST Act, 2017.

(vi) As regard to the observation that the details of shipping bill/bill of export/export invoices are not mentioned in the statement submitted with the reply to the SCN, it is submitted that the said observation is not correct and not legal, as the Ld. Adjudicating Authority has totally failed to understand and appreciate that the Appellant is service provider and not the supplier of goods. In this regard it is submitted that the Appellant is a service provider for which neither Shipping Bills nor Bill of Export is prescribed in the Customs Act, 1962 hence it is not applicable in the present case;

(vii) In regard mention nature of service and complete address, the Appellant already submitted the copies of FIRC wherein the "nature of service" and complete address of service provider and service recipient is clearly mentioned and the same is clearly correlated vide the statement provided under Rule 89(2)(c) of CGST Rules, 2017. Moreover, the Appellant would like to press and submit that Export invoice clearly reflects the amount in USD which can be correlated with the USD as mentioned in FIRC and in addition to this the Appellant would like to mention that the Exporter cannot be placed at gross disadvantageous position by rejecting refund claim on account of procedural lapses without giving proper opportunity to explain. The Appellant also would like to specifically mention that the Ld. Adjudicating Authority totally failed to appreciate and explain as for which purpose the inward foreign remittance is received if the same is not received for export of services and if he is not in agreement with the statement provided by the Appellant;

(viii) the Appellant would like to specifically mention that the Exporter should not be placed at this disadvantageous position by rejecting refund claim on gross misconceptions and acting against the intention of government which is to promote more exports and earn more foreign exchange for the country;

(ix) The buyer company is not in any way related to the appellant, it is submitted that the buyer company is Innovior Research LLC (Registered in USA) whereas the Appellant is Innovior Research Pvt. Ltd (Registered in India) are two independent and distinct companies/firms and carrying their activities independently

(x) The Appellant would like to specifically mention that the Section 2(6)(v) of IGST Act, 2017 read with Explanation 1 to Section 8 of IGST Act, 2017 is not applicable in the present case on hand as the refund claim is in relation to Zero Rate Supplies without payment of tax and hence the transactions carried out by the Appellant are in nature of Inter State Transactions and not Intra State Transactions;

(xi) that the foreign entity i.e. recipient firm i.e. Innovior Research LLC (USA) and the Appellant Innovior Research Pvt. Ltd. (India), both companies are incorporated under different countries would not be governed by the provisions of distinct person since both are separate legal entities, thereby the Appellant would like to contend that the findings in this regard is arrived at without correctly appreciating the clause 2(6)(v) of IGST Act, 2017 and the findings in this regard is not correct and erroneously arrived at

(xii) In respect of No address of the buyer is mentioned in the invoices and only the country of origin name is mentioned i.e. U.S.A" & "Description of services provided not mentioned in the invoices" - it is submitted that both these details are clearly available and verifiable from the copies of FIRC, the correlation was already provided along with the refund application hence the said observation is not correct and not legal.

(xiii) From the above summation it made clear that though the Ld. Adjudicating Authority has travelled beyond the SCN, however, even if all the observations which forms part of rejection order, are properly explainable had the proper opportunity was awarded to the Appellant and the refund on account of exports cannot be rejected on vague grounds and vehemently thereby putting the exporter in disadvantageous position;

(xiv) With the above submissions, the Appellant requested to set aside the impugned order and consider the refund along with applicable interest for causing delay in processing the refund.



Personal Hearing

An opportunity of personal hearing was granted to the appellant on 12.10.2023 whereby Mr.Pravin Dhandharia, CA, appeared before me as authorized representative on behalf of the appellant and submitted additional submissions. He further submitted that due to change of POB, they filed amendment which was allowed by GSTN, but due to some technical glitch the same is not visible to assessing officer. He further produced copies of amended Registration, but the same was not considered and the claim was rejected without any personal hearing. In the past also their claims were sanctioned by the Asst. Commissioner. In view of the above requested to allow appeal.

DISCUSSION & FINDINGS

7. I have carefully gone through the facts of the case, grounds of appeal made by the appellant, and the additional 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 is legal and proper or it has overruled the show cause notice in the allegations alleged against the appellant or otherwise. At the outset, I find that the impugned order was issued and communicated to the appellant on dated 11.05.2023 and present appeal was filed on dated 31.05.2023 i.e. within the three months time limit as prescribed under Section 107 of the CGST Act, 2017.

8. The appellant had filed refund claim for an amount of Rs. 7,16,873/- for export of services without payment of tax under Section 54(3)(i) read with Rule 89(4) of the CGST Rules, 2017. A show cause notice dated 20.04.2023 was issued to the appellant with remarks that the **Statement under Rule 89(2) is not uploaded**. The appellant vide their reply to SCN 25.04.2023 had uploaded the requisite statement under Rule 89(2) of CGST Rules, 2017. In the meanwhile, the adjudicating authority through his officers had conducted a physical verification of the premises at the old address of the appellant. However, the appellant had already amended their GSTN Registration with new address w.e.f. 15.07.2022, which was received by them on 26.08.2022 but was not reflecting in the GST portal due to certain technical glitch. Once again, on the advise of the CGST officers, the appellant got their GST registration certificate amended and visible on the portal on 09.05.2023.

The adjudicating authority had rejected the refund claim on the following grounds;

During the course of physical verification, it is found that the principal place of business does not exist as declared in their GSTN registration;

(ii) *The details of shipping bill/bill of export/export invoices are not mentioned in the statement submitted with the reply to the show cause notice;*

(iii) *In the instant case, the claimant has submitted copies of Certificate of Inward Remittance (FIRC) issued by the Citi Bank along with copies of export invoices raised by the claimant. However, the FIRCs do not contain the details of the export invoices vide which the FIRCs can be co related with the export of services claimed by the claimant. In the absence of the details of invoices in the FIRCs, it cannot be ascertained that FIRCs submitted are related to the particular invoice. Hence, the FIRCs submitted along with the claim cannot be treated as valid FIRCs which is required as per Rule 89(2) of CGST Rules, 2017;*

(iv) *The buyer of the services is are sister concern i.e., M/s. Innovior Research LLC (the appellant) and hence the same cannot be considered as an export of services in terms of Section 2(6)(v) of IGST Act, 2017 where the supplier of service and the recipient of service are not merely establishments of a distinct person;*

(v) *No address of the buyer is mentioned in the invoices. Only the country of origin name is mentioned i.e. U.S.A.*

(vi) Description of services provided not mentioned in the invoice.

10. On going through the remarks mentioned in the show cause notice and the grounds on which the refund has been rejected vide the impugned order, I observe that none of the grounds of the impugned order were found in the show cause notice. Here, I would like to refer CBIC's Circular No. 125/44/2019 - GST dated 18.11.2019, which details the procedure for handling refund claims. The extracts of para 4c and para 9 is reproduced below;-

Para 4.c

"As soon as the ARN is generated, the refund application along with all the supporting documents shall be transferred electronically to the jurisdictional proper officer who shall be able to view it on the system. The application shall be deemed to have been filed under sub-rule (2) of rule 90 of the CGST Rules on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement or a deficiency memo, as the case may be, shall be counted from the said date. This will obviate the need for an applicant to visit the jurisdictional tax office for the submission of the refund application and /or any of the supporting documents. Accordingly, the acknowledgement for the complete application (FORM GST RFD-02) or deficiency memo (FORM GST RFD-03), as the case may be, would be issued electronically by the jurisdictional tax officer based on the documents so received from the common portal."

Para-9 Deficiency Memos

"It may be noted that if the application for refund is complete in terms of sub-rule (2), (3) and (4) of rule 89 of the CGST Rules, an acknowledgement in FORM GST RFD-02 should be issued within 15 days of the filing of the refund application. The date of generation of ARN for FORM GST RFD-01 is to be considered as the date of filing of the refund application. Sub-rule (3) of rule 90 of the CGST Rules provides for communication of deficiencies in FORM GST RFD-03 where deficiencies are noticed within the aforesaid period of 15 days. It is clarified that either an acknowledgement or a deficiency memo should be issued within the aforesaid period of 15 days starting from the date of generation of ARN. Once an acknowledgement has been issued in relation to a refund application, no deficiency memo, on any grounds, may be subsequently issued for the said application."



10.1 In para 1.A.c of the impugned order, the adjudicating authority has clearly mentioned that "No Deficiency Memo has been issued". It is strange that as per the remarks in the show cause notice, Statement under Rule 89(2) has not been uploaded by the appellant. Whereas, no deficiency memo has been issued as soon as RFD-01 has been filed as required by the aforesaid circular dated 18.11.2019. In my opinion, the proper officer is supposed to issue deficiency memo in the absence of any documents filed along with the refund application. In the instant case, no such action has been done. I observed that the grounds on which the refund has been rejected in the impugned order were not mentioned in the show cause notice. Thus, it appears that the impugned order has overruled the show cause notice issued.

11. I find from the grounds on which the refund claim has been rejected and on the other hand the appellant has contended that these grounds have not been levelled in the show cause notice nor a deficiency memo/letter has been issued to them and only in the impugned order these grounds were charged against them.

12. In view of the above facts and discussions, and the appellant's contentions that the grounds mentioned in the impugned order, were not communicated / mentioned in the show cause notice issued to them. I find it proper to direct the Refund Sanctioning Authority to make necessary verification regarding the correctness of the averment of the appellant on the above aspects and pass speaking order following principle of Natural Justice.

13. In view of the above the impugned O-I-O is set aside with the direction to pass speaking order on the above aspects. The appellant is also directed to produce all the records required for the verification of the refund claim to the Refund Sanctioning Authority.

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

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

Adesh Kumar Jain
30/11/2023
(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: .11.2023

// Attested //

Vijayalakshmi V
30/11/23
(Vijayalakshmi V)
Superintendent (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

To

S&P Capital IQ (India) Pvt Ltd
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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

