



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

☎ 07926305065-

टेलीफैक्स 07926305136



DIN- 20231264SW000000A7E9

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/3476, 3477 & 3478/2023 -APPEAL /9568-23

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 182 to 184 /2023-24  
दिनांक Date :19.12.2023 जारी करने की तारीख Date of Issue : 20.12.2023

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. ZG2408230380734, ZL2408230380334 and ZH2408230380623 all dated 25.08.2023 issued by The Assistant Commissioner, CGST Div-VIII, Ahmedabad South.

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

Appellant	Respondent
M/s Tiger Logistics India Limited, Plot No.255, Lilashah Circle, Gandhidham, Kachchh, Gujarat, 370201	The Assistant Commissioner, CGST Div-VIII, 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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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> .





details against the payment that has been received could not be justified in terms of para 48 of Circular No.125/44/2019-GST dated 18.11.2019.

5. Aggrieved by the impugned order rejecting their refund claims, the appellant filed appeal on 28.09.2023 in respect of all the three refund claims on the following grounds:-

a. The Refund should not be denied due to a procedural irregularity in documents. The appellant had furnished documents/undertakings according to Rule 89(2) of the CGST Rules, 2017 and the Circular No.125/44/2019-GST dated 18.11.2019 at the time of filing refund application. It is unjust to reject the refund application solely on account of absence of seal and stamp on the documents, especially when other substantive conditions were satisfied. There is no dispute regarding the correctness of the certificate and annexures submitted earlier.

b. Rejection on subjective belief is beyond the ken of Principle of Natural Justice. It is a well established legal principle that the assessee has an unassailable claim to the credit of tax paid on inputs used in various services. Due to the fact that credit is a vested right of the assessee, it cannot be terminated or restricted in any way without the required legal authority. The appellant has relied upon the Supreme Court's ruling in the matter of Smt. S.R.Venkatraman vs Union of India, reported in (1979)IT LJ 25(SC).

c. The Doctrine of Unjust Enrichment is codified in enactments as "a person should not profit at another's expense and therefore should make restitution for the reasonable value of any property, services, or other benefits that have been unfairly received and retained. In the event of such refund not being granted to the appellant, it would result in unjust enrichment for the Exchequer at the expense of the appellant, which would be a further violation of natural justice and ethics.

With the above grounds of appeal, the appellant has prayed to allow their appeal and set aside the impugned order passed by the adjudicating authority.

5. Personal hearing in this aspect was held on 13.12.2023, whereby Shri Vikash Jaiswal and Shri Gaurav Yadav, both Chartered Accountants appeared before me on behalf of the appellant as authorised representative. They reiterated the written submissions and further submitted that the letter of bank was signed by the bank officer but declarations attached were not stamped. Before they could produce the signed copy, their refunds claims were rejected. In view of the same, requested to allow their refund claims.

#### DISCUSSION & FINDINGS

6. I have carefully gone through the facts of the case, and the submissions made by the appellant at the time of personal hearing and documents available on record. I find that in the instant case appeal is filed by the appellant against the impugned

Order wherein refund claims of accumulated ITC due to export without payment tax as detailed at para 1 above, has been rejected by the adjudicating authority on the grounds that the FIRC declaration issued by the IDBI bank doesn't have any seal or stamp over it. The limited point to be decided in the matter is whether the rejection of refund claims for such procedural lapse is proper or otherwise.

7. 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.

(i). I observe that in the instant case as against the *impugned order* of dated 25.08.2023, the appeal has been filed online on 28.09.23 i.e. appeal filed within the normal period prescribed under Section 107(1) of the CGST Act, 2017.

8. I observe that the adjudicating authority has rejected all the three (3) refund claims of the appellant vide impugned orders on the reason that the FIRC declaration furnished by the IDBI bank does not have the seal or stamp of the bank and thus, the annexure containing details of the invoices, for which the declaration furnished or genuine or not. I find that this is mere procedural lapse on the part of the appellant's bank. The appellant in their grounds of appeal, have contended that by the time they got the issue rectified from the bank, the adjudicating authority had passed the rejection order of their refund claims.

9. The adjudicating authority does not have any dispute in respect of the correctness of the refund claims. I observe that, had the FIRC's would not have been submitted, it would have resulted in illegality under Rule 26 of the CGST Rules. Thus, the mere absence of a seal and stamp of the IDBI bank on the documents is an irregularity and not an illegality. Thus, the refund cannot be rejected on a procedural irregularity.

10. I would like to reproduce the para 48 of Circular No.125/44/2019-GST dated 18.11.2019;

*"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."*

As required under the proviso to Para 48 of the Circular No.125/44/2019-GST dated 18.11.2019, the appellant has produced the certificate from the bank authenticating the receipt of the FIRC's for the invoices as detailed in the annexure to the bank certificate. I observe from the annexure to the bank certificate, stamp of the IDBI bank has been affixed on the face of it, however, it has been left out only over the certificate part, which as per the appellant's contention they had obtained it but by that time the adjudicating authority had passed the refund rejection orders.

11. As per CBIC Circular No. 37/11/2018-GST issued under F. No.349/47/2017-GST Government of India Ministry of Finance Department of Revenue Central Board of Excise and Customs GST Policy Wing New Delhi, Dated 15th March, 2018 BRC / FIRC for export of goods: It is clarified that the realization of convertible foreign exchange 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.. Accordingly, I am of the view that the appellant should be provided with one more opportunity to submit the valid documents from their part.

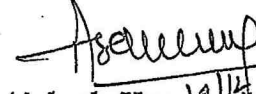
12. In view of the facts and discussions above, I allow the appeals of the "Appellant" with a direction to the proper officer to consider the submissions of appellant and process the refund applications after due verification of documents/details of appellant as directed in Para 9-11 above. The 'Appellant' 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 as directed and pass order accordingly.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

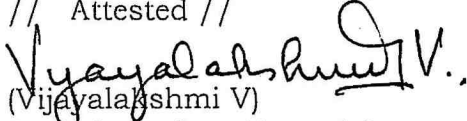
The appeal filed by the *appellant* stands disposed of in above terms.

  
(Adesh Kumari Jain)

Joint Commissioner (Appeals)

Date: .12.2023

// Attested //

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

By R.P.A.D.

To,  
M/s. Tiger Logistics India Limited  
Plot No.255, Lilashah Circle,  
Gandhidham  
Kachchh, Gujarat 370 201.



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

