



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2863/2022 -APPEAL / 1830 - 3S

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-20/2023-24**

दिनांक Date : **30-05-2023** जारी करने की तारीख Date of Issue : **30-05-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZQ2407220111543 DT. 08.07.2022**

issued by The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South

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

**M/s. Magnusminds IT Solution LLP, 503, Mauryansh Elanza,
Nr. Parekhs Hospital, Shyamal, Cross Road, Satellite, Ahmedabad-380015**

(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 .



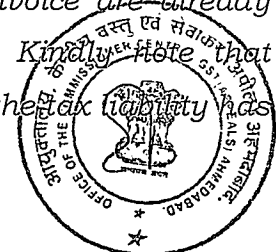
ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Magnusminds IT Solution LLP, 503, Mauryansh Elanza, Nr. Parekhs Hospital, Shyamal Cross Road, Satellite, Ahmedabad – 380 015 (hereinafter referred as '**Appellant**') has filed the present appeal against the Order in the form RFD-06 bearing No. ZQ2407220111543 dated 08.07.2022 (hereinafter referred as '**Impugned Order**') passed by the Assistant Commissioner, CGST, Division – VIII, Ahmedabad South (hereinafter referred as '**Adjudicating Authority**').

2(i). Briefly stated the facts of the case is that the '**Appellant**' is holding GST Registration - GSTIN No. 24ABLFM8681R1Z7 had filed the refund application under category "*Export of services with payment of tax*" on dated 27.05.2022 for Rs.9,01,720/- for the period of November 2021. In response to said refund application a "*Notice for rejection of application for refund*" was issued in FORM-GST-RFD-08 dated 16.06.2022 to the '**Appellant**' wherein, it was proposed that refund applications is liable to be rejected for the reasons "*Other*" with Remark as "*In case of export of service with payment of tax, taxable amount and invoice value cannot be same. For this refund claim, all the invoices values and taxable values are same. Therefore, the payment of tax in this case may not be considered.*" In response to said SCN the Appellant has also filed their reply dated 01.07.2022.

Thereafter, the said refund application is rejected by the '**adjudicating authority**' vide '**impugned order**'. The '**adjudicating authority**' while rejecting the subject refund claim, has given following reasons & findings –

- *Provisions of unjust enrichment are not applicable in terms of provisions of Section 54(8) of the CGST Act, 2017.*
- *Refund has been restricted to the ITC as per those invoices, details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in FORM GSTR 2A of the applicant in terms of Circular No. 135/05/2020-GST dated 31.03.2020.*
- *Claimant has furnished all the FIRC/BRC evidencing receipt of export remittance in respect of zero rated services for this refund claimed.*
- *The claimant in their Reply to SCN stated that "they are unable to amend as the portal shows that refund of same invoice are already being filed hence such invoice can't be amended. Kindly note that Invoice Value in GSTR-1 is just a disclosure part and the tax liability has*



been rightly calculated, disclosed and paid in the GSTR-3B on the basis of taxable value”.

- According to Section 37 of the CGST Act, 2017, the taxpayer has to mention invoice value in their returns. Therefore, the taxpayer has not mentioned the correct value i.e. invoice value in their GST Returns for the relevant period and violated the provision of Section 37 read with Section 15 of the CGST Act, 2017.
- Thus, on the basis of detailed scrutiny of the refund claim documents, the claimant's submission, and the relevant laws and acts, I find that the claimant is ineligible for a total refund claim of Rs.9,01,720/-.

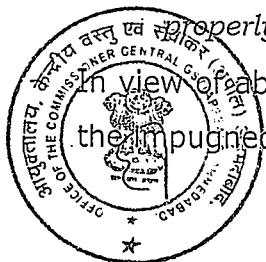
2(ii). Being aggrieved with the impugned order dated 08.07.2022 the 'Appellant' has filed the present appeal on dated 07.10.2022 on the following grounds :

- That having to the facts and circumstances of the case, the Ld. Assessing Officer has erred on facts and in law in rejection the refund under sub-section (9) of Section 54 of the CGST Act, 2017 read with sub-rule (3) of Rule 92 in contravention of the provisions of Section 37 without appreciating the fact that the Invoice Value disclosed in Statement of Outward supply for the month of November 21 is for the disclosure and the liability arise from the said exports has been correctly mention in GSTR-1 and paid through GSTR-3B for the said period.
- Merely because such Invoice Value and taxable values in GSTR-1 is equal, it cannot be presumed that the said liabilities have ceased to exit.
- Further, as per Section 37 of the CGST Act, 2017 as amended by Notification No. 18/2022-Central Tax dated 28.09.2022 the last date to rectify errors or omission in return furnished under Section 37 (Form GSTR-1) is earlier of
 - a. 30th November of subsequent year
 - b. Date of furnishing of relevant annual return.

In case appellant, the last date to rectify errors in form GSTR-1 will stands 30th November, 2022 and appellant have legal right to rectify the error by way of amendment to export invoice till 30th November. However, the GSTN Portal has restricted the appellant for making such amendment.

On the matter listed above the appellant raised many Grievance on the portal but due to technical reason the portal is unable to resolve query properly.

In view of above submissions the appellant has made prayer for set aside the impugned order and allow the refund in full.

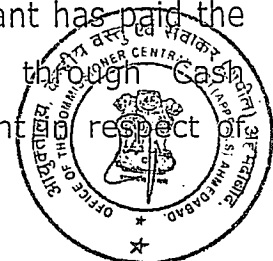


3. Personal Hearing in the matter was held on 22.12.2022 wherein Ms. Pooja D. Shah, C.A. appeared on behalf of the 'Appellant' as authorized representative and stated that they have nothing more to add to their submissions till date.

Discussion and Findings :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. I find that the Appellant has filed refund application for refund of Rs.9,01,720/- under category "Export of services with payment of tax" for the month of November 2021 and in this regard a SCN was issued to the Appellant, proposes rejection of refund on the ground that "invoices values and taxable values are same. Therefore, the payment of tax in this case may not be considered". Further, I find that the appellant has submitted his reply to SCN that GST Portal is not allowing them to amend as refund of same invoice are already being filed, hence, such invoice can't be amended. The appellant has further replied that the tax liability is rightly calculated by them, disclosed and paid in the GSTR-3B. However, I find that the adjudicating authority has rejected the refund claim on the ground that according to Section 37 of the CGST Act, 2017 the appellant has to mention invoice value in their returns, but the taxpayer has not mentioned the correct value i.e. invoice value in their GST Returns for the relevant period and thereby violated the provision of Section 37 read with Section 15 of the CGST Act, 2017.

4(ii). In view of above facts, I find that the refund claim is mainly rejected on the ground that the Total Invoice Value & Total Taxable Value are shown same, in the relevant period of GSTR-1 of Appellant. On going through the impugned order I find that the refund claim is rejected for the aforesaid reason only and I do not find any other reason mentioned in impugned order. As per the SCN and impugned order, the refund claim is solely rejected for the aforesaid reason only. Further, I find that the refund claim is filed within time limit and the export of services in question or receipt of export remittance is also not in dispute. Further, I find that the appellant has also contended before adjudicating authority in reply to SCN that the tax liability has been rightly calculated, disclosed and paid in GSTR-3B. I have gone through the copy of relevant GSTR-1 & GSTR-3B as produced by appellant, I find that the appellant has paid the Tax of Rs.9,01,720/- (through ITC Rs.8,64,763/- & through Cash Rs.36,957/-). Hence, the tax payment made by appellant respect



export of services for which present refund claim preferred is also not in dispute.

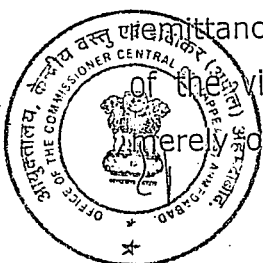
4(iii). Further, as regards to objection raised vide SCN that "taxable value and invoice value cannot be same" the appellant in the present appeal has submitted that they tries to rectify the error by way of amendment in GSTR-1, however, GSTN portal has rejected the amendment and reflected error message as under :

- "You have already claimed refund against the shipping bill/bill of export, hence you cannot amend details."

In this regard, I have referred case of *Mahalaxmi Infra Contract Ltd. Versus GST Council as reported at 2022 (67) G.S.T.L. 140 (Jhar.)*. In the said matter the statement of outward supplies in GSTR-1 returns, instead of mentioning GSTIN of recipient of supplies, assessee inadvertently quoted GSTIN of its own joint venture company and the error came to assessee's notice only during finalization of accounts with recipient of supplies. Mechanism to match details of inward supply furnished by registered person or outward supply which is not rightly declared by supplier in his returns GSTR-1, was not in place. The Hon'ble High Court of Jharkhand at Ranchi has held that : Assessee had valid reason for inability to rectify entries in GSTR-1 returns and approaching High Court under Article 226 of Constitution of India for direction to GSTN to allow it to rectify returns - Assessee should be allowed to rectify impugned mistake, especially as it is revenue neutral exercise and recipients of supply should be allowed to rightly claim ITC.

4(iv). Further, as regards to rectification of errors or omission in return furnished under Section 37 (GSTR-1) the Appellant has also referred Notification No. 18/2022-Central Tax dated 28.09.2022 and contended that *in their case the last date to rectify errors in form GSTR-1 will stand 30.11.2022 and they have legal right to rectify the error by way of amendment to export invoice. However, the GST Portal has restricted them for making such amendment and for which they raised many grievances on the portal but due to technical reason the portal is unable to resolve query properly.*

5. In view of above, I find that the department is not disputing about the export of services or receipt of export remittance. Further, the relevant GSTR-3B is also evidencing the payment of tax for which refund is claimed. Since, the payment of tax, export of services, receipt of export remittance, filing of refund claim within time etc. are not in dispute, I am of the view that substantial benefit of refund claim cannot be denied on the sole ground of 'taxable value and invoice value cannot be

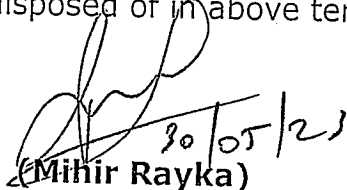


same', particularly when the GSTN Portal restricted the appellant for making such amendment. Further, I find that in the present matter the *adjudicating authority* has issued the *impugned order* without considering the submissions of the *appellant* and rejected the refund claim without communicating the valid or legitimate reasons. I am of the view that proper speaking order should have been passed wherein detailing factors leading to rejection of refund claim should have been discussed. Else such order would not be sustainable in the eyes of law. Needless to say, since the claim was rejected on the sole ground of '*taxable value and invoice value cannot be same*', 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 the CGST Act, 2017 and rules made thereunder.

6. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and 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 provisions of the CGST Act, 2017 and rules made thereunder. The '*Appellant*' is also directed to submit all relevant documents/submission before the *adjudicating authority*.

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

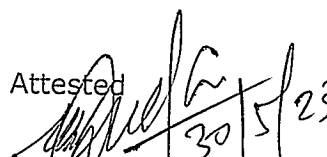
The appeal filed by the appellant stands disposed of in above terms.

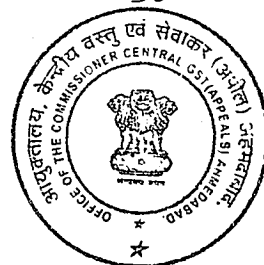

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 30.05.2023

Attested


(Dilip Jadav)
Superintendent (Appeals)



By R.P.A.D.

To,
M/s. Magnusminds IT Solution LLP,
503, Mauryansh Elanza, Nr. Parekhs Hospital,
Shyamal Cross Road, Satellite, Ahmedabad - 380 015

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 Appeals, Ahmedabad.
6. Guard File. / P.A. File

