



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in

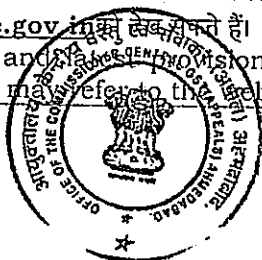


By Regd. Post

DIN NO.: 20231064SW000000BA79

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2434/2023 / १५८८
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-63/2023-24 and 26.09.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	05.10.2023
(ङ)	Arising out of Order-In-Original No. ZG2405230440520 dated 29.05.2023 passed by The Assistant Commissioner, CGST, Division-VI, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Hubilo Softech Private Limited (GSTIN: 24AADCH6343R2Z4), Block-A-2301, Privilon, B/h Iscon Temple, Ambli-Bopal Road, S.G. Highway, Ahmedabad, Gujarat-380054

(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 www.cbic.gov.in पर जा 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. Hubilo Softech Private Limited, (GSTIN 24AADCH6343R2Z4) BLOCK -A-2301, PRIVILON, BH. ISCON TEMPLE, AMBLI-BOPAL ROAD,S.G. HIGH WAY, AHMEDABAD, Ahmedabad, Gujarat, 380054 [hereinafter referred to as ["the Appellant"]] have filed an appeal dated 05-07-2023 against non-credit of Refund amount sanctioned vide Refund Order No. ZG2405230440520 dated 29-05-2023 [hereinafter referred to as "said order"] passed by the Assistant Commissioner, CGST & C.Ex., Division-VI, Ahmedabad-NORTH [hereinafter referred to the "adjudicating authority"]. The Refund claim filed by the Appellant amounting to Rs.1,90,24,434/- has been sanctioned but due to inadvertent error occurred in the GST Portal in selecting the incorrect option of "Refund Rejected" instead of "Refund Sanctioned" by the Refund Sanctioning authority i.e. Adjudicating authority , causing the refund status to inaccurately display as "Refund Rejected" instead of the intended status of "Refund Sanctioned". The appellant vide their letter dated 05-06-2023 intimated the adjudicating authority and requested for rectification of the discrepancy in sanctioning of GST Refund amounting to Rs.1,90,24,434/-, however there is no reply or further development of the matter available on record. Hence the appeal is filed by the Appellant.

Facts of the case in brief, are that the Appellant is registered vide GSTIN *24AADCH6343R2Z4, is engaged in providing services related to Information Technology etc. They had filed an application in RFD-01 on 18-04-2023 for Refund claim of Rs.1,90,24,434/- under the category of "Export of service with payment of Tax" for the period September-2022. During the verification of the claim, it was found by the refund sanctioning authority that the GSTR 2A/GSTR 2B for the relevant period had not been uploaded by the claimant, which is mandatory as per Circular No.125/44/2019-GST dated 18-11-2019. Accordingly on account of the above, the Appellant were issued a show-cause-notice in form of RFD-08 dated 24-05-2023 calling upon them to show cause as to why the Refund claim application should not be rejected.

3. The adjudicating authority after being satisfied that all necessary documents as required in terms of Rule 89(2) of the CGST Rules, have been uploaded, passed the said order as under:

" In view of the above, the refund claim filed by the applicant is found to be in order and accordingly refund claim of the remaining amount of Rs.1,90,24,434/- is sanctioned in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017, RFD-06 is issued on AIO accordingly".

4. Being aggrieved with the non credit of Refund sanctioned vide the said order passed by the adjudicating authority, the Appellant filed the present appeal on the following grounds:

"1. GENERAL

1.1. The final Order passed by the Learned Assistant Commissioner of Central Tax, sanctioning the refund on merits but treating it as "Refund Rejected" due to incorrect selection in the portal, is not sustainable. The Appellant contends that the Order-in-Original, which acknowledges the eligibility for refund and sanctions the refund amount, should be considered as the valid and operative order. The incorrect selection made in the GST portal should not override the substance and validity of the Order-in-Original. Treating the refund as rejected based solely on a technical glitch in the portal is arbitrary and not in accordance with the principles of natural justice. The Appellant requests the Hon'ble Commissioner of Central Tax, GST (Appeal), to rectify this error and consider the refund application on its merits.

1.2 The impugned Order passed by the Learned Assistant Commissioner is manifestly misconceived, contrary to law, and based on assumptions and presumptions, lacking proper consideration of facts, and settled position of law. The Appellant contends that the impugned Order is not based on a proper consideration of the facts and records presented before the Respondent. It appears that the Learned Assistant Commissioner has made assumptions, presumptions, and conjectures while arriving at the conclusion to treat the refund as rejected. The Order fails to address the meritorious contentions and submissions made by the Appellant, and it disregards the settled position of law in relation to the eligibility for and sanctioning of GST refunds. The Appellant requests the Hon'ble Commissioner of Central Tax, GST (Appeal), to set aside the impugned Order and re evaluate the case based on the proper consideration of facts, records, and the applicable provisions of law.

2. THE IMPUGNED ORDER IS PASSED IN GROSS VIOLATION OF THE PRINCIPLE OF NATURAL JUSTICE AND OPPORTUNITY OF BEING HEARD WAS NOT PROVIDED IN RELATION TO THE MATTER UNDER APPEAL

2.1. The violation of the principle of natural justice in treating the refund as "Refund Rejected" without considering the submissions and denying the Appellant an opportunity to be heard. The Appellant contends that the actions of the Learned Assistant Commissioner in treating the refund as "Refund Rejected" at the time of disbursement, despite having passed the impugned Order sanctioning the refund, is a clear violation of the principle of natural justice. The Appellant was not given an opportunity to present their case or be heard before such a decision was made. It is a well-established principle of natural justice

that a person should be given a fair opportunity to be heard before any adverse decision is taken against them. In this case, the Appellant was not provided with the opportunity to present their arguments or clarify any misunderstandings that may have led to the incorrect selection of "Refund Rejected" in the GST portal. Such a denial of natural justice is not in line with the principles of fairness and due process. The Appellant requests the Hon'ble Commissioner of Central Tax, GST (Appeal), to recognize this violation of natural justice and ensure that the Appellant is given a fair opportunity to present their case and rectify the error in the treatment of the refund.

2.2. The Appellant's request for an opportunity of being heard before adjudication and treating the refund application as rejected. The Appellant had explicitly requested in their reply to the Show Cause Notice that they should be provided with an opportunity to be heard before any adverse view is taken on their refund application. This request was made to ensure that the Appellant could present their case in person and provide any necessary clarifications or additional information that may be required for a fair adjudication. However, the Learned Assistant Commissioner disregarded this request and treated the GST refund application as rejected without granting the Appellant an opportunity to be heard. This disregard of the Appellant's request is not in accordance with the principles of natural justice and fairness. The Appellant emphasizes that the opportunity to be heard is a fundamental aspect of due process and is crucial for ensuring a fair and just decision. By denying the Appellant this opportunity, the Learned Assistant Commissioner has acted contrary to the law and has prejudiced the Appellant's right to present their case effectively. Therefore, the Appellant requests the Hon'ble Commissioner of Central Tax, GST (Appeal), to acknowledge this violation of the Appellant's right to be heard and to provide them with an opportunity to present their case in person and rectify the incorrect treatment of the refund.

2.3 The Appellant submits that, with respect to rejection of refund the adjudicating authority must comply the rules set forth in Sub-rule 3 of Rule 92 of the CGST Rules, 2017. The said rules have been re-produced below here-in-below for your ease of reference:

"Rule 92(3) : Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST FD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard."

2.4 The Appellant submits that, based on the aforesaid Rule 92(3) of the CGST Rules, 2017, clearly states that before rejecting any application for a refund, the concerned authority must provide a sufficient opportunity of hearing to the applicant. This procedural requirement is in line with the principles of natural justice, which mandate that parties should have an opportunity to present their case and be heard before any adverse decision is taken against them. In the present case, the Appellant had specifically requested for an opportunity to be heard before the refund application was adjudicated, as mentioned in their reply to the Show Cause Notice. However, the Learned Assistant Commissioner disregarded this request and treated the refund application as rejected without providing the Appellant with the mandatory hearing. The Appellant asserts that the procedural safeguards outlined in Rule 92(3) must be strictly adhered to. Any deviation from these procedural requirements can lead to a violation of the principles of natural justice and render the decision invalid. By failing to comply with Rule 92(3) and denying the Appellant the opportunity of being heard, the Respondent has acted arbitrarily and without proper application of the law. The impugned Order, which is contrary to Rule 92(3) of the CGST Rules, 2017, should be deemed as legally flawed and quashed. Therefore, the Appellant requests the Hon'ble Commissioner of Central Tax, GST (Appeal), to consider this violation of Rule 92(3) and quash the impugned Order on this ground alone.

2.5. The Appellant wishes to submit that the Rule 92(3) of the CGST Rules, 2017 makes it clear that hearing is mandatory before rejecting any application for refund. In this regard the Appellant places reliance on the following High Court judgments:

- a) M/s. World Home Textiles Inc Vs The Additional Commissioner [2020- T10L-2172-HC-MAD-GST]
- b) M/s. Mahalia Tech Pvt Ltd Vs the Union of India [2020-TIOL-2068-HC- KAR-GST]
- c) HCL Infosystems Limited vs. The Union of India [TS(DB)-GST-HC(DEL)-2019-635]
- d) Godavari Commodities Limited vs. The Union of India [TS(DB)-GST-HC(JHA)-2019-233]
- e) Thoppil Agencies vs. Assistant Commissioner of Commercial Taxes [TS(DB)-[GST-HC(KAR)-2020-600]
- f) Damodar Corporation vs. The Union of India and others [TS(DB)-I GST-HC(KER)-2020-727]

2.6. The Appellant further submits that, the master circular issued in relation 'Fully electronic refund process through FORM GST RFD-01 and single disbursement vide Circular No. 125/44/2019 - GST dated 18 November 2019 states that the adjudicating authority shall pass a rejection order following the principle of natural justice. The relevant para of the said circular has re-produced here-in-below for your ease of reference.



"15. Further, there are doubts on the procedure to be followed in situations where the final refund amount to be sanctioned in FORM GST RFD-06 is less than the amount of refund sanctioned provisionally through FORM GST RFD-04. For example, consider a situation where an applicant files a refund claim of Rs.100/- on account of zero-rated supplies. The proper officer, after prima-facie examination of the application, sanctions Rs.90 as provisional refund through FORM GST RFD-04 and the same is electronically credited to his bank account. However, on detailed examination, it appears to the proper officer that only an amount of Rs.70 is admissible as refund to the applicant. In such cases, the proper officer shall have to issue a show cause notice to the applicant, in FORM GST RFD-OB, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why the amount claimed of Rs. 30/- should not be rejected as per the relevant provisions of the law; and the amount of Rs. 20/- erroneously refunded should not be recovered under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

16. The proper officer for adjudicating the above case shall be the same as the proper officer for sanctioning refund under section 54 of the CGST Act. The above notice shall be adjudicated following the principles of natural justice and an order shall be issued, in FORM GST RFD-06, under section 54 of the CGST Act, read with section 73 or section 74 of the CGST Act, as the case may



De.... " Thus, it can be deduced from the above the para 15 and 16 of the supra order the adjudicating authority must follow the principles of natural justice and provide the applicant to the opportunity of being heard where there is any reduction of refund or adverse or prejudicial to the applicant. The scenario given in the circular is like the Appellant case and the opportunity of being heard not provided. Hence, the Appellant implores that the impugned Order has been passed bad in law and liable to be set aside.

2.8 The Appellant humbly submits that it is a settled law that any order passed by sanctioning of the refund and later treating the same as rejection of refund is it against the natural justice shall be void. This principle is laid by the Hon'ble Supreme Court in the case of Dhramapal Satyapal Ltd vs Dy Commissioner Guwahati [2015 (320) E.L.T. 3 (S.C.)] where it has been made clear beyond any doubt that any authority cannot jump-over the compliance of principles of natural justice and that procedure should be designed to ensure accurate or appropriate outcomes in support of the above. The relevant extract of the judgment is provided below:

"The principles of natural justice developed over a period of time and which is still in vogue and valid even today were : (i) rule against bias, i.e. nemo iudex in causa sua; and (ii) opportunity of being heard to the concerned party, i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty

to give reasons in support of decision, namely, passing of a 'reasoned order'....

The rule of procedure is to see that the law is applied accurately and, as a consequence, that the social good is realized...

... can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose".

2.9 Further, the Hon'ble Supreme Court in various cases has insisted that with a view to control arbitrary action on the part of the administration, the person adversely affected by administrative action be given the right of being heard before the administrative body passes an order against him. Also, held that in order to enforce equality under Article 14 of the Indian Constitution, a right of hearing is essential to the person adversely affected by administrative order. In this regard the Appellant places reliance on the following judgements:

a) In the case of Delhi Transport Corporation v. DTC Mazdoor Congress [1990 (9) TIMI 334 - SUPREME COURT], the hon'ble Supreme Court held that

'audi alteram partem' rule which is essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here.. "

b) Similarly, in the case of Maneka Gandhi v. Union of India [1978 (1) TMI 161 - SUPREME COURT] the hon'ble Supreme Court opined that Article 14 is an authority for the proposition that the principles of natural justice are an integral part of the guarantee of equality assured by Article 14 an order depriving a person of his civil right passed without affording him an opportunity of being heard suffers from the vice of violation of natural justice.

2.10. In the light of the above, the appellant humbly prays that the inference made by the Learned Assistant Commissioner of Central Tax in the impugned order is liable set-aside on the ground of violation of the principles of natural justice alone, as the Appellants rights are being prejudicially affected. Hence, the impugned Order to be set aside and the refund claim should be processed and refund should be disbursed in accordance with the provisions of GST Law.

3. THE FINAL REFUND ORDER IS VALID AND BINDING

3.1. The Appellant contends that the refund claim application filed by them was thoroughly verified by the Learned Assistant Commissioner of Central Tax, who subsequently passed a final refund order. This order explicitly states that the

refund claim is found to be in order and is sanctioned in accordance with the provisions of Section 54 of the CGST Act, 2017, read with Rule 89 of the CGST Rules, 2017. Consequently, FORM-GST-RFD-06 was issued by the authority. The Appellant asserts that this final refund order, which affirms the eligibility and entitlement of the Appellant to receive the refund, is valid and legally binding. The refund claim application was duly scrutinized, and all necessary requirements and conditions were fulfilled by the Appellant. Therefore, based on the findings of the Learned Assistant Commissioner and the issuance of FORM-GST-RFD-6, the Appellant argues that they are entitled to the disbursement/payment of the GST refund amount as sanctioned in the final refund order. The Appellant requests the Hon'ble Commissioner of Central Tax, GST (Appeal), to acknowledge the validity of the final refund order and ensure the prompt disbursement/payment of the GST refund amount in accordance with the order. By upholding the validity of the final refund order, the Appellant will receive the rightful amount they are entitled to, as determined by the competent authority.

3.2 The Appellant contends that the final refund order issued by the Learned Assistant Commissioner of Central Tax is a speaking order that has been issued in writing. They argue that the order satisfies the requirements set forth in Rule 92 of the CGST Rules, 2017, which governs the process of sanctioning refunds and the issuance of final orders. A speaking order is one that provides detailed reasons and justifications for the decision taken by the authority. It ensures transparency, accountability, and adherence to the principles of natural justice. The Appellant asserts that the final refund order in their case meets these criteria as it outlines the basis for sanctioning the refund claim and demonstrates compliance with the relevant provisions of the CGST Act, 2017, and CGST Rules, 2017. The Appellant further argues that the sanctity of the final refund order should not be undermined or disregarded at a later stage, particularly during the disbursement process. Treating the refund as rejected based on an incorrect selection in the GST portal is not in accordance with the GST laws and regulations. Therefore, the Appellant urges the quashing of the impugned order solely on the basis that the final refund order, being a valid speaking order issued in accordance with the law, should be respected and implemented accordingly. By upholding the validity and authority of the final refund order, the Appellant seeks the prompt disbursement/payment of the GST refund amount as sanctioned in the order.

3.3. It is submitted that as per Section 54(8) of the CGST Act, 2017 read with Rule 92(4) of the CGST Rules, 2017 provides the proper officer to issue the payment Order in FORM-GST-RFD-05 for refund sanctioned and the same shall be electronically credited to the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund. The

relevant portion of the supra Rule has been re-produced here-in-below for your ease of reference:

" Rule 92. Order sanctioning refund

(4) Where the proper officer is satisfied that the amount refundable under sub-rule (1) 5[or sub-rule (1A)J or sub-rule(2) is payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GT RFD-06 and issue a payment order in FORM GST RFD-05 for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice:

Provided that the order issued in FORM GST RFD-06 shall not be required to be revalidated by the proper officer:

Provided further that the payment order] in FORM GT RFD-05 shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said 6[payment order was issued.

3.4 From the above prescribed Rule, It is submitted that as per Rule 92(4) of the CGST Rules, 2017, the proper officer is required to issue simultaneously a payment order in FORM GST RFD-05 as per the Final Order passed by him in FORM GST RFD-06. Therefore, taking a contrary view at the time of generating the payment Order in FORM GST RFD-05 is not permissible and is a clear violation of the procedures and manner prescribed in the CGST Rules, 2017.

It is important to note that as per the proviso inserted to Rule 92(4) of the CGST Rules, 2017, the Final Order in FORM GST RFD-06 and the payment order in FORM GST RFD-05 are not required to be revalidated. Therefore, revalidating and taking a contrary view to the final Order passed for the rejection of the refund is not permitted. Such actions would be a blatant violation of the prescribed manner and procedures set forth in Rule 92. Hence, we humbly request your Hon'ble Commissioner to direct the Learned Assistant Commissioner to rectify the incorrectness in the AIO i.e., the GST portal, and issue the GST payment order in FORM GST RFD-05 in accordance with the refund sanctioned.

3.6. The Appellant further emphasizes that it is a well-established legal principle that procedural safeguards must be strictly adhered to. In the absence of specific procedural safeguards, the principles of natural justice must be complied with. Therefore, the final Order passed by the Learned Respondent for the sanctioning of the refund is valid and binding, and the GST payment order in FORM GSTR RFD-05 should be issued accordingly. Considering this, we humbly implore your Hon'ble Commissioner to direct the Learned Assistant Commissioner to rectify the incorrectness in the AIO i.e., the GST portal, and issue the GST payment order in FORM GSTR RFD-05 in accordance with the refund sanctioned.

4. THE RULES PRSCRIBED CAN NOT OVERRIDE THE ACT

4.1. The Appellant contends that the Learned Assistant Commissioner, by treating the refund as rejected at the time of issuing the payment order in FORM GSTR RFD-05, has erroneously extended the scope of the provisions of the GST Act. It is important to note that the refund was already sanctioned by the issuance of an Order in FORM GST RFD-06. Therefore, the action of considering the refund as rejected during the issuance of the payment order is incorrect and not in accordance with the provisions of the GST Act.

4.2 The Appellant asserts that Section 54 of the CGST Act, 2017 stipulates that the proper officer should adhere to the form and manner prescribed in the rules for sanctioning a refund. However, it is important to note that the prescribed rules cannot override the provisions of the Act itself. In the present case, the process of issuing the AIO and uploading the Order in the GST portal is a procedural aspect that should not be allowed to override the provisions of the Act.

4.3. The Appellant further contends that the maintenance of records in the AIO and the uploading of the final Order is a procedural aspect and should not be considered conclusive. In a situation where there is no valid reason for rejection and a final Order has been passed to sanction the refund, taking a contrary view based on procedural lapses prescribed in the refund rules is not sustainable under GST laws.

4.4. At the outset. It is emphasized that the CGST Act, 2017 clearly states that in case of rejection, the proper officer should provide reasons for the rejection in the final Order. However, in this case, the Learned Assistant Commissioner initially sanctioned the refund but later took a contrary view due to procedural errors in the GST portal. Therefore, there was no valid reason for rejection. The inference made by the Learned Assistant Commissioner to reject the refund based on the incorrect selection in the GST portal is not in accordance with GST laws and should be quashed. We respectfully request your Hon'ble Commissioner to direct the Learned Assistant Commissioner to rectify the errors in the AIO and issue the GST payment order in FORM GSTR RFD-05 in accordance with the sanctioned refund at the earliest.

5. THERE IS NO REASON FOR REJECTION OF THE REFUND

5.1. The Appellant highlights that the Learned Assistant Commissioner thoroughly verified the refund application and supporting documents, and in the Final Order, specifically discussed the merits of the refund and sanctioned 100% of the refund amount. This clearly indicates that there were no ambiguities in the process and the refund was deemed eligible. However, the decision to deny the issuance of the payment order solely based on the selection of the "Refund Reject" option in the GST portal is unjust and not in accordance with the law.



5.2 The Appellant contends that the reason provided by the Learned Assistant Commissioner for denying the refund based on a technical glitch in the GST portal is not a valid ground for rejection. The Learned Respondent's decision to take a contrary view against his own Order is incorrect. The rejection of the refund solely due to a procedural error or incorrect selection made in the GST portal is unjustified. Therefore, we respectfully request your Hon'ble to direct the Learned Assistant Commissioner to rectify the error in the AIO (GST portal) and issue the GST payment order in FORM GSTR RFD-05 in accordance with the sanctioned refund amount at the earliest.

6. INTERST SHOULD BE PAYABLE ON DELAYED REFUNDS

6.1 It is submitted that the Learned Deputy Commissioner has already sanctioned the GST refund by passing Order in FORM GST RFD - 06. As per Section 56 of the CGST Act, 2017 if any refund sanctioned is not refunded within sixty (60) days from the date of receipt of application under sub-Section (1) of that section, interest at such rate not exceeding six per cent as may be specified shall be payable in respect of such refund from date of immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax. The said Section have been re-produced here-in-below for your ease of reference.



"Section 56 - Interest on delayed refunds If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

....."

6.2. The Appellant emphasizes that the Learned Assistant Commissioner has already issued the Order sanctioning the refund. However, the payment has not been made due to the incorrect selection of the refund option in the GST portal, resulting in the erroneous categorization of the refund as rejected. In accordance with Section 56 of the CGST Act, 2017, once the Order for refund sanction has been passed, if the payment is not made within 60 days, the applicant is entitled to receive interest on the delayed payment. The Appellant requests that the interest on the delayed payment be calculated from the date immediately after the expiry of sixty days from the date of receipt of the application until the actual refund of the tax.

6.3 The Appellant asserts that they are legally entitled to receive the GST refund as per the Final Order passed in FORM-GST-RDF-06. The delay in making the GST payment is not the fault of the Appellant but rather a result of the incorrect selection of the option in the GST portal, which is beyond their knowledge and

control. Therefore, the Appellant maintains that they are legally entitled to receive interest as per Section 56 of the CGST Act, 2017 for the delay in payment of the refund.

6.4. Based on the above submissions, the Appellant respectfully requests the Hon'ble Commissioner to direct the Learned Assistant Commissioner to rectify the incorrectness in the AIO (Assessment and Issue Order) and GST portal and issue the GST payment order in FORM GSTR RFD-05 in accordance with the refund sanctioned. Furthermore, the Appellant also requests the Hon'ble Commissioner to ensure the payment of applicable interest as per Section 56 of the CGST Act, 2017 for the delay in payment of the refund.”

MISCELLANEOUS

7.1. That all the grounds taken here-in-above are without prejudice to one another.

7.2. Based on the discussion provided, the Appellant submits that the refund claim filed on 18 April 2023 should be considered by the Respondent for processing and disbursing the refund. The Appellant asserts that the Order passed by the Respondent is valid and should be processed for the sanctioning of the refund.

PERSONAL HEARING:

Personal hearing in the matter was held on 11.09.2023 virtually, Shri Raghavendra N. Chartered Accountant appeared on behalf of the Appellant in the present appeal. During the Personal Hearing he submitted that due to some technical error, though refund was sanctioned and OIO has also been issued, but in system, it was rejected and RFD-05 is not issued. He further requested to grant refund and allow the appeal with consequential relief.

DISCUSSIONS AND FINDINGS:

6. I have gone through the facts of the case, available documents on record and written submissions made by the 'Appellant'. I find that the Appellant is mainly aggrieved with the non-issuance of RFD-05 Payment order that has arisen due to inadvertent error caused in GST Portal, resulting in incorrect display of the refund status "Refund rejected", in spite of the refund of Rs.1,90,24,434/- under the category of "Export of service with payment of Tax" for the period September-2022 already been sanctioned by the adjudicating authority to the Appellant vide the said order.

6.1 At the foremost, I observed that in the instant case the "said order" is of dated 29-05-2023 and the present appeal is filed online on 05-07-2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within

three months time limit. Therefore, I find that the present appeal is filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

6.2 I find that the appellant has contested the non-receipt of RFD-05 of Refund sanctioned to them under Rule 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017 vide the said order and the said refund, due to technical error occurred, is showing "Refund Rejected" in the GST Portal. I find that both i.e. the Order dated 29-05-2023 passed by the adjudicating authority and the status showing the said Refund claim dated 18-04-2023 on GST Portal are contradictory. Though the refund has been sanctioned, however, the Refund amount has still not been credited to their bank account. I find that the appellant vide their letter dated 05-06-2023 has already informed the Refund sanctioning authority about the same. However, I find that the matter is yet not resolved by them. Therefore the Appellant has filed present appeal.

6.3 I find that there is no dispute about the admissibility of the refund claim as it is already sanctioned by the adjudicating authority. The only issue is that due to technical error occurred, it is showing "Refund Rejected" in the GST Portal. Hence, I do not find it necessary to go through the provisions of the Refund under the CGST Act and Rules, 2017. However, a refund sanctioned by the Refund Sanctioning authority is complete when an order in Form-GST RFD-06 is issued and a payment order in form GST-RFD-05 for the amount of refund is issued and the same is electronically credited to any of the bank accounts of the applicant mentioned in their registration particulars as specified in the refund application. Text of the relevant Rule under CGST Rules, 2017 is re-produced hereunder:

Rule 92- Order sanctioning refund:

(4) Where the proper officer is satisfied that the amount refundable under sub-rule (1) [or sub-rule (1A)] or sub-rule(2) is payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue a [payment order] in FORM GST RFD-05 for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund [on the basis of a consolidated payment advice];

6.4 In view of the above, I am of the view that the Appellant should not be denied their legitimate right of getting the refund of Rs.1,90,24,434/- under the category of "Export of service with payment of Tax" for the period September-2022, as sanctioned by the adjudicating authority but no action seems to have been taken by the Jurisdictional Officer to credit the said amount in the Bank



account of the Appellant. I find that the grievance of the Appellant is genuine and needs to be resolved by the concerned authority as soon as possible.

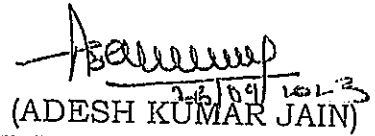
7. In view of above, I Pass the following order:

The Jurisdictional Officer is directed to take necessary steps to credit the Refund amount of Rs.1,90,24,434/- in the bank account of the Appellant, as per order passed by the Assistant Commissioner of CGST & C.Ex. Division-VI dated 29-05-2023 in respect of Refund claim for "Export of service with payment of Tax" for the period September-2022, filed by the Appellant on 18-04-2023, with consequential relief.

8. The appeal filed by the Appellant is allowed in above terms.

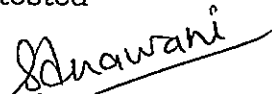
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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



(ADESH KUMAR JAIN)
JOINT COMMISSIONER(APPEALS)
CGST & C.EX., AHMEDABAD.

Attested


(Sunita D. Nawani)
Superintendent,
CGST & C.Ex.,
(Appeals), Ahmedabad

By R.P.A.D.

To:

M/s. Hubilo Softech Private Limited, BLOCK -A-2301, PRIVILON, BH. ISCON TEMPLE, AMBLI-BOPAL ROAD,S.G. HIGH WAY,, AHMEDABAD, Ahmedabad, Gujarat, 380054. (GSTIN 24AADCH6343R2Z4)

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Appeals, Ahmedabad
3. The Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
4. The Additional Commissioner(Systems) CGST & C.Ex, Ahmedabad-North Commissionerate.
5. The Deputy/Assistant Commissioner, CGST & C.Ex. Division-VI, Ahmedabad-North Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File/ P.A. File.

