

TAX INFO

Dated 29/06/2022

Latest update on GST Law: **Refund rejection order in full cannot be passed when the SCN in RFD-08 was issued only for a part of the refund amount** as given by Gujarat High Court.

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Name of Petitioner	TTEC India Customer Solutions Private Limited
Name of Respondent	The Deputy Commissioner of Sales Tax
Court	Gujarat High Court
Date of Judgement	24/12/2021
Appeal No.	R/Special Civil Application No. 18270 Of 2021

Brief Facts of the Case Law:

The petitioner is engaged in the export of customer solution service as per the GST legislation. The petitioner opted to export services under bond or letter of undertaking without payment of integrated tax and claim refund of unutilised ITC. Application for refund of unutilised ITC was preferred by the petitioner on 27.01.2021 aggregating to Rs.2,84,04,175/- for the period February, 2019 to March, 2020. The petitioner also substantiated its claim with necessary documents as sought by the authority; the physical copies of Foreign Inward Remittance Certificates ('the FIRC's') for the payments received during the period of refund application also have been tendered. The Department issued a show cause notice on 18.03.2021 in Form GST RFD-08 proposing the rejection of the refund application to the extent of Rs.36,85,893/-. Thus, the show cause notice limited itself to the rejection of the refunds to the extent of the said amount of Rs.36,85,893/- out of the total refund claim of Rs.2,84,04,175/-. On 24.03.2021, the petitioner replied, in detailed, to the said show cause notice vide RFD-09 justifying why it is eligible for the refund to the tune of Rs.36,85,893/-. During the course of personal hearing, on 24.03.2021 itself, the oral submissions have also been made by the petitioner. The officer concerned proceeded on leave on personal grounds and therefore, the matter was assigned to another officer, who was required to give a fresh opportunity of personal hearing to the petitioner. However, the newly appointed officer, without availing any opportunity of hearing passed an order on 13.05.2021 rejecting the entire claim of refund amounting to Rs.2,84,04,175/-. Therefore, on 12.08.2021 considering the stringent provisions of limitation for filing an appeal as provided under Section 107 of the CGST Act, 2017, the petitioner preferred the appeal in Form GST APL 01 before the Appellate Authority challenging the order, however, the appeal has not been listed for hearing. The petitioner, therefore, was aggrieved and approached this Court.

Decision of the Court:

It is quite obvious that once a show cause notice for the refund claim of Rs.36,85,893/- is issued at the best, the rejection that can be made is for the amount for which the show cause notice is issued and surely not for any higher amount than specified in show cause notice. It is quite obvious that is a gross and apparent mistake that the authority concerned has travelled beyond the scope of show cause notice. That itself is the valid and apt ground for the Court to interfere. So far as the non-availment of the opportunity of hearing is concerned, the officer, who has heard the petitioner has not delivered the order and the one who passed the order impugned has done so without availing a fresh opportunity to the petitioner. The officer concerned, if had any doubt or question on the issue to be addressed while deciding the matter on merit, the opportunity of hearing to the petitioner could have been given and then the matter ought to have been decided in accordance with law. Non-availment of the opportunity of hearing, more particularly when it affects adversely the petitioner and exceeds the scope of show cause notice, the order deserves indulgence. Thus, this Court quashes and set asides the order and direct the authority to avail an opportunity to the petitioner in relation to the show cause notice dated 18.03.2021 to schedule a day for hearing and decide the matter in accordance with law bearing in mind the basic requirement.

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