



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 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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टेलीफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

(DIN:- 20210764SW000000C4A5)

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फाइल संख्या : File No : GAPPL/ADC/GSTP/232/2021

2392 To 2396

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अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-017/21-22
दिनांक Date : 22-07-2021 जारी करने की तारीख Date of Issue 30-07-2021

श्री मोहित अग्रवाल, अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mohit Agrawal, Additionl Commissioner (Appeals)

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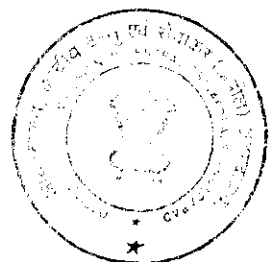
Arising out of Order-in-Original No. ZU2412200114824 dated 10.12.2020 issued by Assistant Commissioner, Central GST, Division-Gandhinagar, Gandhinagar

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

M/s . Chiron Surgimed LLP, Survey No. 883/1, GIDC Road No.3, Mansa. Gandhinagar-382845

(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 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

M/s. Chiron Surgimed LLP, Survey No.883/1, GIDC Road No.3, Mansa, Gandhinagar-382845, Gujarat, (*hereinafter referred as 'appellant'*) has filed the present appeal against the Form-GST-RFD-06 dated 10.12.2020 (*hereinafter referred as 'impugned order'*) rejecting SGST refund of Rs.10,31,669/-, passed by the Assistant Commissioner of CGST & Central Excise, Gandhinagar Division, Gandhinagar Comm'rate (*hereinafter referred as 'adjudicating authority'*).

2(i). The facts of the cases, in brief, are that the appellant is holding GST Registration No.24AAKFC5213D1ZZ. On 04.11.2020, the appellant filed a Refund claim of SGST amounting Rs.14,09,120/- for the period October-2018 to March-2019, on account of ITC accumulated due to inverted tax structure vide ARN No.AA241120010377Y.

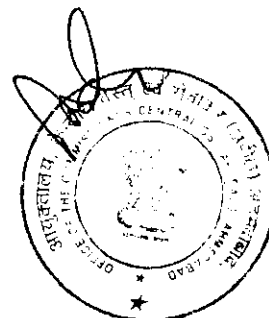
2(ii). Subsequently, a Show Cause Notice (*hereinafter referred as 'SCN'*) dated 03.12.2020, under Form RFD-08 was issued to the appellant proposing rejection of refund amounting Rs.10,31,669/- and for filing of reply to the said SCN. Opportunities of personal hearing also granted to the appellant. The reply to the SCN was filed by the appellant on 09.12.2020. The adjudicating authority, vide the impugned order, sanctioned the amount of Rs.3,77,451/- and rejected the amount of Rs.10,31,669/- as proposed under SCN.

2(iii). The appellant preferred an appeal on 01.02.2021 against the said impugned order under which they submitted that

- (a) *they are supplying surgical goods outward supplies @ 5, 12 & 18 percent and GST rate @ 18% on inputs which is higher than the GST rate on output supplies;*
- (b) *that they have filed the refund claim as per the formula provided under Rule 89(5) of CGST Rules, 2017;*
- (c) *the impugned order has travelled beyond the provisions of Section 54(3) of CGST Act, 2017 read with Rule 89(5) of CGST Rules, 2017;*

3. Personal hearing in the case was held on 08.06.2021 in virtual mode. Shri Harshadbhai G. Patel, Advocate, attended the hearing for the appellant. He reiterated the submissions made in appeal memorandum and requested to consider their appeal.

4(i). I have carefully gone through the facts of the case available on records, submissions made by the appellant in the Appeal Memorandum as well as at the time of personal hearing. I find that the main contention of the appellant is that they have filed the refund claim as per the provisions of Section 54(3) of CGST Act, 2017 read with Rule 89(5) of CGST Rules, 2017.



4(ii). The relevant part of Section 54(3) of CGST Act, 2017 reads as under :

"54. Refund of tax – (3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than —

- (i) zero rated supplies made without payment of tax;*
- (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:*

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies."

4(iii). The relevant part of Rule 89 (5) of CGST Rules, 2017 reads as under :

"89. Application for refund of tax, interest, penalty, fees or any other amount.- (5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC + Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation:- For the purposes of this sub-rule, the expressions –

- (a) —Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and*
- (b) "Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).*

4(iv). "Adjusted Total turnover" and "relevant period" defined under sub-rule(4) of Rule 89 reads as under :

" 'Adjusted Total Turnover' means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

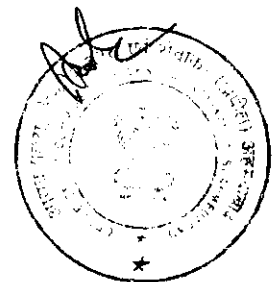
(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding-

- (i) the value of exempt supplies other than zero-rated supplies; and*
- (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period."*

'Relevant period' means the period for which the claim has been filed."

4(iv). The adjudicating authority has shown the method of calculation in para-2 of the impugned order which is same as discussed in para-4(iii) here-in-above. The adjudicating authority has considered the figures/amounts reflected in the GSTR-3B Return of the appellant. Thus, it can be said that the adjudicating authority has not taken the figures/amounts arbitrarily. When the figures have been taken from the GSTR-3B correctly, the refund amount is correctly ascertained to be Rs.3,77,451/-, by applying the said formula



laid down under Rule 89(5) of the CGST Rules, 2017. Had it been so, the contention of the appellant does not sustain or acceptable. The appellant has contended that the amount of "Turnover of inverted rated supply of goods & service" is Rs.4,43,63,661.84 instead of Rs.6,76,31,771/-, as considered in the impugned order. However, the appellant failed to submit any evidence/proof in support of their contention and did not putforth any substantial ground for accepting their contention. In absence of any substantive support of documents and grounds, I find myself unable to accept the contention of the appellant and as such do not find any infirmity in the impugned order which is based on the figures reflected in their GSTR-3B.

6. In view of above, the impugned order is upheld. The appeal of the appellant is rejected and disposed of accordingly.

(Signature)
(Mohit Agrawal)

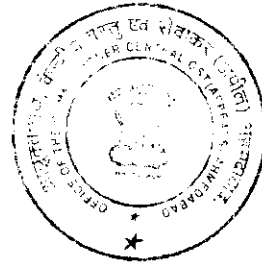
Additional Commissioner(Appeals)

Date : .07.2021.

Attested

(Signature)
23/07/21

(Jitendra Dave)
Superintendent (Appeal)
CGST, Ahmedabad.



BY R.P.A.D. / SPEED POST TO :

M/s. Chiron Surgimed LLP,
Survey No.883/1, GIDC Road No.3,
Mansa, Gandhinagar-382845, (Gujarat).

Copy to :-

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Principal Commissioner/Commissioner, CGST & Central Excise, Gandhinagar Comm'rate.
3. The Addl./Jt. Commissioner, (Systems), CGST & Cen. Excise, Gandhinagar Comm'rate.
4. The Dy./Asstt. Commissioner, CGST & Cen. Excise, Gandhinagar Divn, Gandhinagar Comm'rate.
5. Guard File.
6. P.A. File.