



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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DIN NO. : 20230164SW0000823679

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/320 to 326 & 329/2022/6905-12

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-ADC-76 to 83/2022-23

दिनांक Date : 30-12-2022 जारी करने की तारीख Date of Issue : 05-01-2023

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

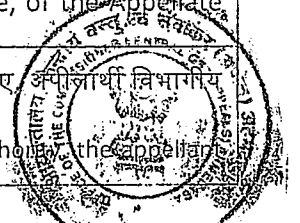
ग Arising out of the following Orders-in-Original issued by the Assistant Commissioner, Central Goods and Service Tax, Division Kadi, Gandhinagar Commissionerate

S.No.	Order In Original No.
1.	ZW2402220026326 dt. 02.02.2022
2.	ZQ2402220026426 dt. 02.02.2022
3.	ZW2402220026304 dt. 02.02.2022
4.	ZO2402220026360 dt. 02.02.2022
5.	ZX2402220026293 dt. 02.02.2022
6.	ZZ2402220026448 dt. 02.02.2022
7.	ZY2402220026560 dt. 02.02.2022
8.	ZS2402220026482 dt. 02.02.2022

घ अपीलकर्ता का नाम एवं पता Name & Address

अपीलकर्ता	प्रतिवादी
The Assistant Commissioner CGST, Division Kadi 4th Floor, Janta Super Market, Near Vepari Jin, Kalol - 382721	M/s Ratnamani Healthcare Pvt Ltd (Presently known as M/s Ratnatris Pharmaceuticals Pvt Ltd) Survey No. 416, Ahmedabad-Mehsana Highway, Village Indrad, Kadi, Mehsana

(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 त्रिभागीय 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.

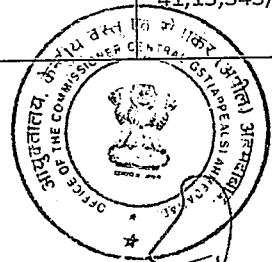


ORDER-IN-APPEAL**BRIEF FACTS OF THE CASE:**

The following appeals have filed by the Assistant Commissioner, CGST, Division-Kadi, Gandhinagar Commissionerate (herein after referred to as the "appellant"/ "department") in terms of Review Order(s) issued under Section 107(2) of the CGST Act, 2017 (hereinafter referred as "the Act") by the Reviewing Authority i.e the Commissioner, CGST, Gandhinagar Commissionerate against RFD-06 (herein after referred as the "impugned order(s)") as mentioned below passed by the Assistant Commissioner, CGST, Division - Kadi, Gandhinagar Commissionerate (herein after referred as the "adjudicating authority") in the case M/s. Ratnamani Healthcare (P) Ltd., (Now : M/s. Ratnaris Pharmaceuticals), Survey No. 416, Ahmedabad Mehsana Highway, Village Indrad, Taluka Kadi, Mehsana [GSTIN : 24AABCI4573Q1Z4] for amount shown against respective ARN No (hereinafter referred to as the "respondent") on account of un-utilized ITC accumulated due to inverted tax structure. The details are as under:

TABLE -A:

Sr. No	Appeal File Number	Date of filing of appeal	Refund sanctioned Order (Impugned Order-RFD-06) No. & Date / Refund Applicatin ARN No. & Date	Refund claimed for the month	Review Reference (Impugned Review Order) No. & Date	Amount of Refund sanctioned (In Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	GAPPL/ADC/GSTD/320/2022	29.07.2022	ZW2402220026326 / 2.2.2022 (ARN NO. AA2412210206190 / 7.12.2021)	Feb 2021	AA2412210206190 / 14.06.2022	20,37,837/-
2	GAPPL/ADC/GSTD/326/2022	29.07.2022	ZQ2402220026426 / 2.2.2022 (ARN NO. AA241221020579K / 7.12.2021)	Jan 2021	AA241221020579K / 14.06.2022	30,05,614/-
3	GAPPL/ADC/GSTD/325/2022	29.07.2022	ZW2402220026304 / 2.2.2022 (ARN NO. AA241221020534Y / 7.12.2021)	Dec 2020	AA241221020534Y / 14.06.2022	75,24,573/-
4	GAPPL/ADC/GSTD/329/2022	29.07.2022	ZO2402220026360 / 2.2.2022 (ARN NO. AA241221020457S / 7.12.2021)	Nov 2020	AA241221020457S / 14.6.2022	2,03,797/-
5	GAPPL/ADC/GSTD/322/2022	29.07.2022	ZX2402220026293 / 2.2.2022 (ARN NO. AA241221020395U / 7.12.2021)	Oct 2020	AA241221020395U / 14.06.2022	76,03,188/-
6	GAPPL/ADC/GSTD/323/2022	29.07.2022	ZZ2402220026448 / 2.2.2022 (ARN NO. AA2412210203326 / 7.12.2021)	Aug 2020	AA2412210203326 / 14.6.2022	32,38,996/-
7	GAPPL/ADC/GSTD/324/2022	29.07.2022	ZY2402220026560 / 2.2.2022 (ARN NO. AA241221020268T / 7.12.2021)	Jul 2020	AA241221020268T / 14.6.2022	25,67,144/-
8	GAPPL/ADC/GSTD/321/2022	29.07.2022	ZS2402220026482 / 2.2.2022 (ARN NO. AA2412210202253 / 7.12.2021)	Jun 2020	AA2412210202253 / 14.6.2022	41,15,343/-



2. Brief facts of the case in all these 08 (eight) appeals is that the "respondent" registered under [GSTIN:24AABCI4573Q1Z4] has filed refund claim(s) on account of unutilized ITC accumulated due to inverted tax structure for the month of Jun 2020, July 2020, August 2020, October 2020, November 2020, December 2020, January 2021 and February 2021 respectively for amount shown in Table-A mentioned above under Section 54 of the CGST Act, 2017. After verification of said refund claims the adjudicating authority found the claim(s) in order and accordingly sanctioned the refund amount as shown against Col no.4 and Col No.7 as mentioned in Table-A above for the respective months vide "impugned order(s)".

Subsequently, the appellant department has reviewed all the sanctioned refund orders (as mentioned above in Table-A) which had been passed by the Assistant Commissioner, CGST, Division - Kadi, Gandhinagar Commissionerate, by observing that the orders passed by the Refund Sanctioning Authority are not legal and proper in as much as the claimant / respondent has already availed the refund of IGST paid on export goods and simultaneously claimed refund of ITC accumulated on account of inverted tax structure. Further, the refund sanctioning authority has also erred in arriving at the Adjusted Total Turnover by not considering the turnover in respect of zero rated supplies. Accordingly, directed to file an appeal in FORM-GST-APL-03 with an authorization and hence the present appeal(s) filed by the Assistant Commissioner, CGST, Division - Kadi, Gandhinagar Commissionerate on 29.07.2022 before the appellate authority.

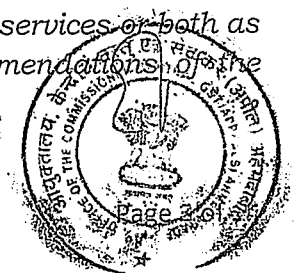
3. Being aggrieved with the impugned refund order(s) (RFD-06), the appellant preferred appeal(s) on the following grounds:

- i. The refund order(s) issued by the appellant sanctioning refund of unutilized ITC accumulated due to inverted tax structure, is not legal and proper and it is not in conformity with Section 54(5) of CGST Act, 2017 and rules made thereunder and hence same is / are liable to be set aside.
- ii. Third proviso to Section 54(3) of CGST Act, 2017 states that no refund of Input Tax Credit shall be allowed, if the supplier of goods or service or both avails of drawback in respect of Central Tax or claims refund of the Integrated Tax paid on such supplies. For ease of reference, Section 54(3) is reproduced as under :

Section 54(3)

Subject to the provisions of sub-section (10), a registered person may claim refund of any un-utilized input tax credit at the end of any tax period: Provided that no refund of un-utilized 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 Council*



Provided further that no refund of un-utilized input tax credit shall be allowed, in cases where the goods exported out of India are subject 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 on Integrated Tax paid on such supplies.

- iii. The respondent has not included the value of exports made on payment of tax for computing the Adjusted Turnover. It is submitted that there is no provision in law for making such kind of exclusion while arriving at the Adjusted Total Turnover. The tweaking of the method of arriving at the Adjusted Total Turnover by the respondent is bad in law and without authority. Since the respondent has exported goods on payment of tax and has already availed refund of IGST paid, as per the third proviso to Section 54(3) *ibid*, the respondent becomes ineligible for simultaneous refund of ITC accumulated on account of inverted tax structure.
- iv. Further, while sanctioning the refund claim(s), the refund sanctioning authority has also erred in considering wrong value of *Adjusted Total Turnover* in as much as it is not in according with the Rule 89 of the CGST Act, 2017 and definition as per Section 2(112) of the CGST Act, 2017 while arriving at the value of Adjusted Total Turnover by not considering the turnover in respect of zero rated supplies. The definition of Adjusted Total Turnover provided in Rule 89(E) is reproduced hereunder:

“Rule 89(4)(E) : “Adjusted Total Turnover” means the sum total of the value of :

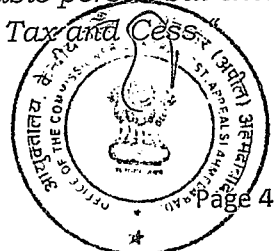
- (a) the turnover in a State or a Union Territory, as defined under clause (112) of Section 2, excluding the turnover of services; and*
- (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non zero-rated supply of services;*

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.”*

The term *“Turnover in a State or a Union Territory”* has been defined vide Section 2(112) of the CGST Act, 2017, which is reproduced below:

“Section 2(112): “Turnover in State” or “Turnover in Union Territory” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reversed charge basis) and exempt supplies made within a State or Union Territory by a taxable person, exports of goods or services or both and inter-state supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes Central Tax, State Tax, Union Territory Tax, Integrated Tax and Cess.”



From the above, it is clear that for arriving at the value of Adjusted Total Turnover, the **Turnover in respect of the exports has to be included**. However, the respondent has failed to do so which has resulted into erroneous sanction of excess refund in all the instant case(s).

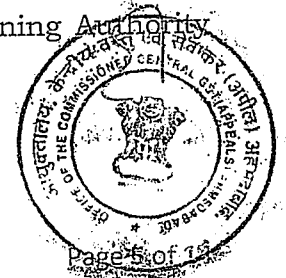
Further, the refund sanctioning authority has erroneously sanctioned the amount of refund, which resulted in excess sanction of refund as mentioned below in Table-B:

The particulars are tabulated in Table-B as below:

TABLE-B:

Sr. No	Refund claimed for the month of	Refund sanctioned Order (Impugned Order-RFD-06) No. & Date / Refund Applicatin ARN No. & Date	Amount of Refund sanctioned (In Rs.) by adjudicating authority	Inverted turnover / Turnover of inverted rated supply (In Rs)	Adjusted Total Turnover (in Rs.) (inclusive of export turnover)	Net ITC available (in Rs.)	Tax paid on Inverted rated supply (in Rs.)	Refund eligible as per formula (in Rs.)	Excess refund sanctioned (in Rs.)
1	Feb 2021	ZW2402220026326 / 2.2.2022 (ARN NO. AA2412210206190 / 7.12.2021)	2037837	47040017	63152496	9962101	5466649	1953760	84076
2	Jan 2021	ZQ2402220026426 / 2.2.2022 (ARN NO. AA241221020579K / 7.12.2021)	3005614	37765143	47503295	7649306	4504034	1577168	1428446
3	Dec 2020	ZW2402220026304 / 2.2.2022 (ARN NO. AA241221020534Y / 7.12.2021)	7524573	29025497	67246146	11629044	3305203	1714248	5810324
4	Nov2020	ZO2402220026360 / 2.2.2022 (ARN NO. AA241221020457S / 7.12.2021)	203797	44469603.5	59776888	5770368	5322152	(-) 10294423	in admissible
5	Oct 2020	ZX2402220026293 / 2.2.2022 (ARN NO. AA241221020395U / 7.12.2021)	7603188	31142740	41299267	11938695	3560242	5442428	2160760
6	Aug 2020	ZZ2402220026448 / 2.2.2022 (ARN NO. AA2412210203326 / 7.12.2021)	3238996	32872588	64692817	7461190	3944710	(-) 153429	in admissible
7	Jul 2020	ZY2402220026560 / 2.2.2022 (ARN NO. AA241221020268T / 7.12.2021)	2567144	13947895	43428053	4801678	1673747	(-) 1,31,580	in admissible
8	Jun 2020	ZS2402220026482 / 2.2.2022 (ARN NO. AA2412210202253 / 7.12.2021)	4115343	23897396	54485937	7483984	2866398	416059	3699284

Thus, the "impugned refund order(s)" passed by the Refund Sanctioning Authority / "adjudicating authority" is/are not legal and proper in as much as



1. the respondent has already availed the refund of IGST paid on export goods and simultaneously claimed refund of ITC accumulated on account of inverted tax structure. As per third proviso to Section 54(3) of the IGST Act, 2017, once the taxpayer has claimed the refund of the IGST paid, he is not entitled to claim simultaneous refund of ITC accumulated due to inverted tax structure.
2. Further, the refund sanctioning authority has also erred in arriving at the Adjusted Total Turnover by not considering the turnover in respect of zero-rated supplies.
3. To set aside the impugned order(s) of the refund sanctioning authority and order recovery of the entire amount along-with interest and penalty.

CROSS EXAMINATION FILED BY RESPONDENT:

4. The respondent filed their cross examination vide letter dated 8th December 2022 (received by this office on 12th December 2022) wherein they inter-alia contended as under:

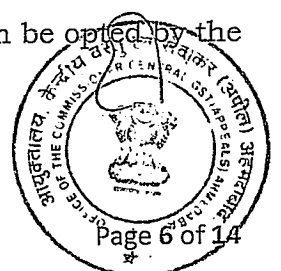
A : The refund order(s) is/are not in conformity with Section 54(3) of the CGST Act, 2017 and rules and hence to be set aside :

4.1 The respondent are manufacturer of pharmaceutical products, due to their purchase of raw materials are fall into higher tax rates than their supply of goods (ITC rates are higher than Output tax rates) hence they fall into Inverted Duty Structure and they have to claim the refund of Net ITC (excluding ITC of Services and Capital goods). Together with domestic supply of goods, the respondent are also exporting their manufacturing products. Eventually, they have claimed refund under GST, as per law under two different categories viz. (1) claimed refund of tax paid under refund claim of "Export with Payment of Tax" and they got direct refund amount on the basis of online matching GST data with Export Data in various table of GSTR-3B and GSTR-1 and (2) Refund under inverted tax duty structure.

4.1.2 They further contended that the observations by the appellant department and interpretation of Section 54(3) is not correct while arriving at conclusion that the impugned refund order(s) (RFD-06) is/are not legal and proper and liable to be set aside. The provision under section 54(3) safeguards the government revenue from certain situations, wherein the exporter could claim double benefit. The safeguards are:

1. No refund of accumulated credit if exported goods are subject to export duty;
2. No refund of accumulated credit if exporter claims drawback of CGST;
3. **No refund of accumulated credit if exporter claims refund of IGST paid on exported goods.**

4.1.3 They further contended that as per Section 16 of the IGST Act, 2017 the exporter is eligible to claim refund of the GST paid on export of goods and two options have been given to the exporter to claim refund of taxes paid on exports (either of which can be opted by the exporter) :



- a. Non-payment of tax on goods which are exported under bond / LUT and claiming refund of unutilized input tax credit;
- b. Payment of tax on goods which are exported and claiming refund of such tax.

Meaning thereby, for refund claim under Inverted Duty structure, the intention of the law is not to disallow the refund but to restrict the claim by not including the exported goods in refund claim, just to make sure that no double benefit is taken by the exporter. Hence, by stretching the imagination and misinterpreting the law, concluding that the respondent is not eligible for GST refund under inverted duty structure, just because IGST refund was claimed on exported goods with payment of tax option, is totally incorrect. The law and Section 54(3) do not at all specify any such provision. Instead, it is clearly mentioned that refund claim on inverted duty structure shall not be available on exported goods on which IGST refund has been claimed when export of goods are under option of payment of tax.

B. Value of Adjusted Total Turnover has been wrongly considered in calculation of refund claim (s) :

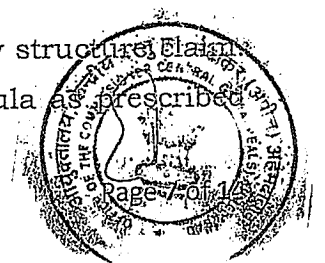
4.2 The respondent like to submit that the observation made by the appellant department is not in conformity with the law and intention of the government to allow refund under inverted duty structure claim. As per para 11.1 of the appeal memorandum "11.1 The definition of Adjusted Total Turnover under Rule 89(4)(E) of CGST Rules, 2017 read with Section 2(112) of CGST Act, 2017. mandates value of exported goods to be included in Adjusted Total Turnover, therefore, exclusion thereof will result in sanction of ineligible amount of refund in instant case(s).", that the appellant department has majorly misunderstood the facts of their case and has applied completely irrelevant and wrong rule while concluding that the refund sanctioned is not legal and proper.

4.2.1 Rule 89(4) is applicable in the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the IGST Act, 2017. Their export of goods are not under bond or LUT, but they have exported goods under payment of tax option and hence, Rule 89(4) is not applicable to them at all.

4.2.2 Secondly, the refund calculation formula as applicable and mentioned in Para 11.3 of the appeal memorandum is solely application for all cases following under Rule 89(4) and hence, the said formula for refund calculation is not at all applicable in their case and it is absolutely distinguished as they have exported goods under payment of tax option.

4.2.3 Based on the above, the appellant department have completely misunderstood and wrongly interpreted the case based on some wrong belief. The entire review and subject appeal(s) filed is based on this wrong interpretation and hence, deserves to be set aside.

4.2.4 Rule 89(4) does not contain and mention anything of Inverted duty structure. Their claim(s) is/are for Inverted Duty and hence, the calculation formula as prescribed



under Rule 89(4) is not applicable to them, but it is applicable only in the cases of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking. Relevant portion of Rule 89(4) is reproduced as under :

“(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax, Act 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula-

Refund Amount = (Turnover of zero rated supply of goods + Turnover of Zero rated supply of services) X Net ITC / Adjusted Total Turnover”

Below are the crystal clear take away from the above Rule in the instant case(s)

1. Rule 89(4) is applicable on in the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of under taking and not in the case of inverted duty structure claim and not in the case of export of goods with payment of tax. As the statute has clearly distinguished both the above cases very categorically. Hence, the interpretation in review appeal is absolutely on wrong presumption and misleading.
2. The formula prescribed in Rule 89(4) does not contain anything with respect of Inverted Rated supplies of goods, instead it says only for the cases of export of goods of services without payment of tax. The appellant department is well aware that their refund claim(s) is/are not falling under which category and it is for refund on account of inverted rated supplies. Hence, the review appeal(s) filed is/are completely on the wrong basis and should not sustain.

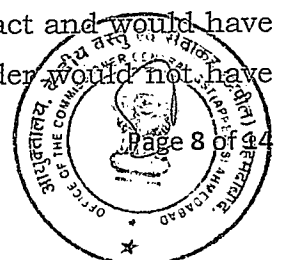
4.2.5 Further, they drawn attention towards the fact that the amount of inverted rated supplies of goods and services considered in the formula is also wrong, even they consider, for sake of argument, that Adjusted Total Turnover should include value of export of goods. If that the case, the amount of value of export of goods should also be included in the value of Total Turnover, same way it is to be included in value of Adjusted Total Turnover.

4.2.6 The appellant department should have considered the fact that Refund claim(s) in case of Inverted Duty Structure has been prescribed under Rule 89(5). Their refund claim(s) in the instant case(s) fall under Rule 89(5) and not in Rule 89(4). The relevant part of Rule 89(5) is reproduced as under:

“(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}”

4.2.7 The appellant department ought to have considered the above fact and would have considered the above, the question of setting aside refund sanction order would not have



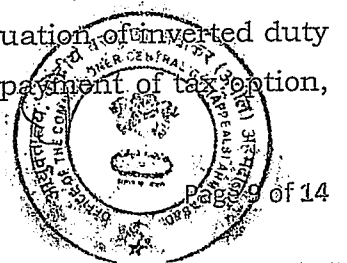
arose, as the definition under Rule 89(5) is very clearly mention the term Inverted Rated Supply of Goods and Services together with Adjusted Total Turnover and under both the terminology, value of export of goods should be inclusive, if falling within purview of Inverted Rated Duty Structure.

C. Not understanding and recognizing portion of Inverted Duty Structure in case of exports also, same way as in case of domestic supplies, when goods are exported under option of export with payment of tax :

5. Before giving arguments, the respondent requested to consider the below situations:
- (i) Together with domestic supply of goods, the respondent also export manufactured goods which attracts IGST at the rate of 5%, and have exported goods under the option to pay IGST on outward supply and claim refund of the same in terms of Section 16 of the IGST Act. The respondent also received the said refund of IGST amount paid on export supplies automatically after export details provided in monthly return are matched with the shipping bill filed at Customs port. However, the respondent still have accumulated input tax credit in their ledger as the tax paid on output supplies and received as refund was at the rate of 5% whereas their inputs were taxed at the rate of 12% or 18%. For the remaining balance of credits, it can be argued that the exporter should be granted refund on account of inverted duty structure also together with domestic supplies for which refund claim is available under inverted tax duty structure.
 - (ii) The intention of the third proviso under Section 54(3) is to bar the exporter of goods from claiming refund of the same amount of tax under two different mechanisms and thereby receive undue benefit under the law. However, it seems that draftsmen have not considered the situation of inverted duty structure arising in case of exports made under the option to pay output tax and claim refund.

The Government has always intended, even before implementing GST also under old regime, to provide full refund of taxes to an exporter of goods or services and thereby encourage exports. Therefore, considering the intention of law, it can be argues that the aforesaid safeguard should be read in the spirit of the law and the denial of credit should ideally be restricted only to such an amount as has been utilized for payment of IGST on outward supply and claimed as refund; accordingly the remaining balance of credit should be granted as refund. In other words, it can be contended that the aforesaid third proviso to Section 54(3) above should be read in context and not literally.

- (iii) Alternatively, under another option of claiming refund of GST when goods are exported without payment of tax (under LUT), the entire amount of input tax credit is allowed to be claimed as refund and not only to be extent of applicable output tax on such exported goods. Meaning thereby, the government never intended to disallow refund claim on export of goods in situation of inverted duty tax structure, even if the export of goods are under with payment of tax option,



and hence, there should not be any disallowance nor any reduction in their refund claim and the original refund sanction order(s) should prevail it is.

PERSONAL HEARING:

6. Personal hearing in the matter on all these appeals held on 19.10.2022, Mr. Viral J Shah, Authorised Representative, appeared on behalf of the respondent in all these appeals for cross examination. During P.H. he has been requested 15 working days for additional submissions and granted for the same. They further requested another 20 days to submit the additional submissions and granted for the same.

DISCUSSION AND FINDINGS:

7. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is

(i) whether the impugned order(s) passed by the Adjudicating Authority is /are legal & proper and is/are in conformity with Section 54(5) of the CGST Act, 2017 or not

(ii) whether the adjudicating authority has erred in considering the wrong value of Adjusted Total Turnover in as much as it is not in accordance with Rule 89 of the CGST Rules, 2017.

8. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the "appellant" in their appeal memorandum and cross examinations / submissions made by the respondent in all the instant case(s) and documents available on record. The facts and grounds in all the appeals are same.

9. I find that the present appeals were filed to set aside the impugned order(s) on the grounds that the adjudicating authority has sanctioned excess refund amounts to the respondent and hence to order recovery of the same along-with interest and penalty. The grounds made in appeal(s) is that as per the proviso to Section 54(3) of the CGST Act, 2017 "no refund of Input Tax Credit shall be allowed, if the supplier of goods or service or both avails of drawback in respect of Central Tax or claims refund of the Integrated Tax paid on such supplies."

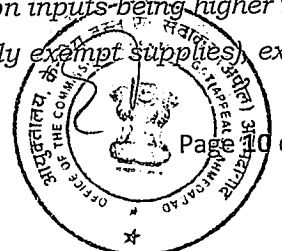
I refer to the relevant portion of Section 54(3) of the CGST Act, 2017 which is reproduced as under:

Section 54(3)

Subject to the provisions of sub-section (10), a registered person may claim refund of any un-utilized input tax credit at the end of any tax period:

Provided that no refund of un-utilized input tax credit shall be allowed in cases other than :

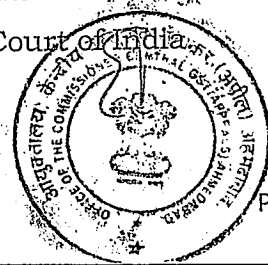
- (i) Zero rated supplies made without payment of tax;
- (ii) Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) except



Provided further that no refund of un-utilized input tax credit shall be allowed in cases where the goods exported out of India are subject 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 on Integrated tax paid on such supplies.

I find that the appellants department have reviewed all the refund cases on the basis of the second proviso to Section 54(3) of the CGST Act, 2017 i.e. 'no refund of input tax credit shall be allowed, if the supplier of goods or services or both claims refund on Integrated tax paid on such supplies. The review has been made just on the basis of the plain reading of the above provision. What it has been mis-interpreted here is that the provision very clearly talks about "integrated tax paid on such supplies (emphasis added)". Here, 'such supplies' means that simultaneous benefit of refund of input due to inverted tax structure accumulated against some set of supplies, cannot be extended if they have claimed refund of IGST on such supplies. To be more specific, if any export on payment of IGST (i.e. zero rated supply) is made against some invoice and the taxpayer claims refund of such IGST, then the taxpayer cannot claim refund under inverted tax structure covering the same invoices/supplies. The clear interpretation is that simultaneous benefit cannot be extended to the taxpayer. This proviso restricts the taxpayer/exporter to claim refund of the same amount of tax under two different mechanisms of claiming refund and thereby receive undue benefit. Law allows the exporter to claim refund of integrated tax paid on goods exported out of India. This mechanism is basically refund of integrated tax on zero rated supplies and the taxpayer has the option to pay integrated tax on exported goods and claim refund of such integrated tax. Now, the refund of Input Tax Credit resulting from Inverted Duty Structure under the GST law is altogether different mechanism. The term 'inverted duty structure' refers to a situation where the rate of tax on inputs purchased is more than the rate of tax on output supplies. 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), it results in inverted duty. The intention of the law is to allow such inverted duty. To be more specific, both the mechanism of getting refund is altogether different and independent of each other. Thus, it shouldn't be interpreted that if a taxpayer claims refund on any single export on payment of IGST, he will not be eligible for refund of unutilized input tax credit where the credit has accumulated on account of rate of tax on inputs higher than the rate of tax on output supplies. Second proviso to Section 54(3) of the CGST Act, 2017 is only to ensure that double benefit should not be claimed by the taxpayer under two different mechanisms for the same supply. In Union of India Vs. Wood Papers Ltd. [1990 (47) E.L.T. 500 (SC) = (1990) 4 SCC 256 = 1990 SCC (Tax) 422 = JT (1991) SC 151], it was held that, '.....the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation.' This also reiterated in the case of Commissioner of Customs (Import), Mumbai Vs M/s. Dilip Kumar & Company in Civil Appeal No. 3327 of 2007 by the Supreme Court of India

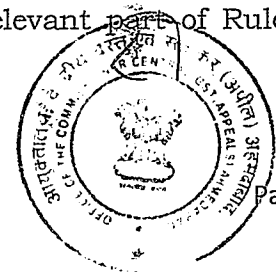


In Union of India Vs. VKC FOOTSTEPS INDIA PVT. LTD.[2021 (52) G.S.T.L. 513 (S.C.)], the Apex Court has held that 'Section 54(3), first proviso - Refund of unutilised ITC can be allowed only in eventualities envisaged in clauses (i) and (ii) - Term "Other than" operates as limitation or restriction - Clause (ii) is restriction and not mere condition of eligibility - Explanation 1 indicates that for domestic supplies, refund can be allowed only of unutilized credit accumulated on rate of tax on input goods being higher than rate of output supplies - While enacting Clause (ii) of first proviso to Section 54(3) in CGST Act, Parliament, took legislative notice of a specific eventuality namely "where credit has accumulated on account of rate of tax on inputs being higher than rate of tax on output supplies" - Parliament would be cognizant of fact that ITC may accumulate for a variety of reasons, of which an inverted duty structure is one situation.'

In view of the above discussion, I am of the opinion that the contentions raised by the appellant department are not sustainable in law and various contentions raised under para 4 of the respondent is sustainable in terms of the provisions of law and that the adjudicating authority has rightly sanctioned the refund amount of the respondent.

Now, coming to the formula and the calculation part of the refund, I find that the observation made by the appellant/department is not in conformity with the law and intention of the government to allow refund under inverted duty structure claim. In the appeal memorandum, the learned reviewing authority has observed that, 'The definition of Adjusted Total Turnover under Rule 89(4)(E) of CGST Rules, 2017 read with Section 2(112) of CGST Act, 2017 mandates value of exported goods to be included in Adjusted Total Turnover, therefore, exclusion thereof will result in sanction of ineligible amount of refund in instant case(s).' I find that the present appeals were filed to set aside the impugned refund order(s) (RFD-06) on the grounds that the adjudicating authority has also erred in considering wrong value of Adjusted Total Turnover in as much as it is not in accordance with Rule 89 of the CGST Rules, 2017 and sanctioned excess refund amount(s) to the respondent.

It may be seen that the refund sanctioning authority/ adjudicating authority vide GST-RFD-08 had issued notices proposing rejection of refund claims being inadmissible for reasons that value of adjusted total turnover appeared not proper. The respondent in reply vide RFD-09 had stated that they had exported goods on payment of tax and already claimed refund of IGST under 'Export with payment of tax', hence such turnover has been excluded from calculation of refund claim. The adjudication authority had sanctioned the refund after due consideration of the above reply and the calculation part of the refund. Now, the calculation part is under review. To examine this issue, I find that the contentions raised by the respondents are legally correct and acceptable. The appellant /department has not considered the fact that Refund claim(s) in case of Inverted Duty Structure has been prescribed under Rule 89(5) of CGST Rules, 2017. Their refund claim(s) in the instant case(s) fall under Rule 89(5) and not in Rule 89(4). The relevant part of Rule 89(5) is reproduced as under :



“(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}”

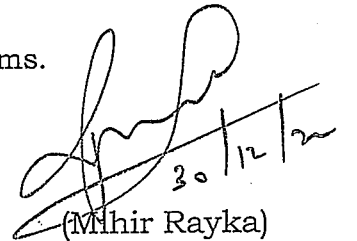
The formula prescribed in Rule 89(4) does not contain anything with respect of Inverted Rated supplies of goods, instead it says only for the cases of export of goods of services without payment of tax. I find that the reasons put forward by the respondent for including the value of exports made on payment of tax for computing the Adjusted total turnover is proper and legal and hence, the review appeal(s) filed on this basis are not sustainable. Hence, I find that the *adjudicating authority* has passed legal and proper refund orders (RFD-06) while sanctioning the same and are in accordance with Section 54 of CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

10. In view of the above, I find that the contentions raised by the appellant department are not sustainable in law and various contentions raised under para 4 of the respondent is sustainable in terms of the provisions of law and judicial precedence in the matter as discussed above. Hence, I hold that the adjudicating authority has rightly sanctioned the refund amount of the respondent in the impugned orders. Hence, I do not find any reason to interfere with the impugned order, which is liable to be upheld.

11. In view of the above discussion and findings, I reject the appeal filed by the department and uphold the impugned order passed by the adjudicating authority.

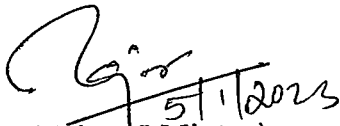
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

12. The appeal(s) filed by the appellant stand disposed of in above terms.

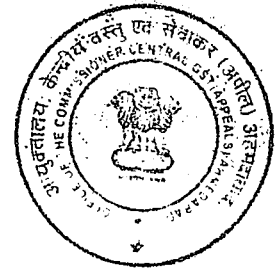

30/12/22

(Mihir Rayka)
Additional Commissioner (Appeals)
Date: 30.12.2022

Attested


5/1/2023

(Tejas J Mistry)
Superintendent,
Central Tax (Appeals), Ahmedabad



By R.P.A.D.

To
The Assistant Commissioner,
Central Excise & CGST, Division – Kadi,
Gandhinagar Commissionerate.
2nd Floor, Janta Super Market, Near Vepari Jin,
Kalol (N.G), Gujarat :

Copy to:

- 1.The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
- 2.The Commissioner, CGST & C.Excise, Appeals, Ahmedabad
- 3.The Commissioner, Central GST &C.Ex, Commissionerate-Gandhinagar.
- 4.The Dy / Assistant Commissioner, CGST & C.Ex, Division-Kadi, Gandhinagar Commissionerate.
5. M/s. Ratnamani Healthcare Pvt Ltd,(Presently known as M/s. Ratnaris Pharmaceuticals Pvt Ltd) Survey No. 416, Ahmedabad Mehsana Highway, Village Indrad, Kadi, Mehsana : 382 721
- 6.The Additional Commissioner, Central Tax (System), Gandhinagar.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
8. Guard File.
9. P.A. File.

