



सत्यमेव जयते

आयुक्त(अपील)काकार्यालय,
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
0792630506- टेलिफैक्स 07926305136



DIN NO. : 20230164SW000000F277

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/356/2022 / 2203 - 14

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-ADC-90/2022-23
दिनांक Date : 23-01-2023 जारी करने की तारीख Date of Issue : 25-01-2023

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित
Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

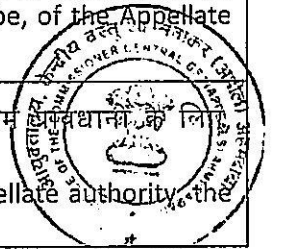
ग Arising out of Order-in-Original No ZU2401220067870 dated 07.01.2022
issued by Assistant Commissioner, Central Goods and Service Tax,
Division-Palanpur, Gandhinagar Commissionerate

घ अपीलकर्ता का नाम एवं पता Name & Address:

1. Appellant
The Assistant Commissioner
CGST, Division Palanpur
Sardar Patel Vyapar Sankul, Malgodown Road,
Mehsana, Gujarat - 384002

1. Respondent
M/s Ghasura Mohammad Asif Abbaskhan [GSTIN: 24AFUPG6926N1ZR]
Sukhbag Road, Mahamadi Society,
Dhundhiyawadi, Palanpur, Banaskantha,
Gujarat - 385001

(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 - (v) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (vi) 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 अपीलार्थी प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority the appellant may refer to the website www.cbic.gov.in.



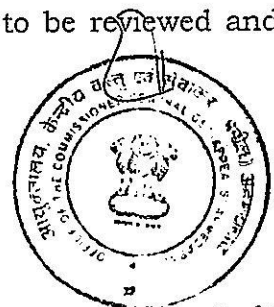
ORDER-IN-APPEAL**BRIEF FACTS OF THE CASE:**

The Assistant Commissioner, CGST, Division-Palanpur, Gandhinagar Commissionerate (herein after referred to as the "appellant" / "department") have filed the present appeal in terms of Review Order dated 22.07.2022 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 Refund Sanction Order No. ZU2401220067870 (FORM-GST-RFD-06) dated 07.01.2022 (herein after referred as the "impugned refund order") passed by the Assistant Commissioner, CGST, Division - Palanpur, Gandhinagar Commissionerate (hereinafter referred as the "adjudicating authority") in the case M/s. Ghasura Mohammed Asif Abbaskhan, Mahamadi Society, Sukhbag Road, Dhundhiyawadi, Palanpur, Banaskantha - 385 001 [GSTIN : 24AFUPG6926N1ZR] amounting to Rs. 20,09,028/- vide ARN No. AA241221090419E dated 29.12.2021 (hereinafter referred to as the "respondent") under Section 54(5) / 56 of the CGST Act, 2017 on account of Input Tax Credit (ITC) accumulated due to inverted tax structure.

2. Brief facts of the case in the present appeal that the "respondent" is registered under [GSTIN: 24AFUPG6926N1ZR] and has filed an refund claim vide ARN No. AA241221090419E dated 29.12.2021 amounting to Rs. 20,09,028/- on account of ITC accumulated due to inverted tax structure for the period from February 2020 to March 2021 under Section 54 of the CGST Act, 2017. The calculated refund amount by taking the value as under :

Inverted Rated Supply	:	Rs. 1,00,000/-
Adjusted Total Turnover	:	Rs. 1,00,000/-
Net ITC available	:	Rs. 20,21,028/-
Tax paid on inverted rated supply:		Rs. 12,000/-

The refund sanctioning authority after due verification of the claim and found the claim is in order and accordingly vide the impugned refund order dated 07.01.2022 the adjudicating authority has sanctioned the refund claim for Rs. 20,09,028/- in respect of ITC accumulated due to inverted tax structure for the period from February- 2020 to March-2021 filed by the respondent under Section 54 / 56 of the Central Goods and Service Tax Act, 2017. Subsequently, the appellant department has reviewed the impugned refund order which had been passed by the Assistant Commissioner, CGST, Division - Palanpur, Gandhinagar Commissionerate, by observing that the orders passed by the Refund Sanctioning Authority is not justified, legal and proper, and required to be reviewed and appealed.



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

(i) that the impugned refund order passed by the adjudicating authority is not justified, legal and proper.

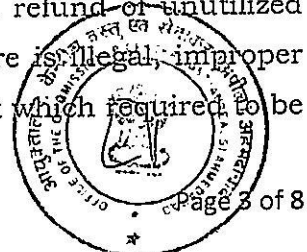
(ii) The respondent filed refund claim of Rs. 20,09,028/- in r/o ITC accumulated due to inverted duty structure for the tax period from February 2020 to March 2021, calculated the refund amount by taking the value as under :

Inverted Rated Supply	:	Rs. 1,00,000/-
Adjusted Total Turnover	:	Rs. 1,00,000/-
Net ITC available	:	Rs. 20,21,028/-
Tax paid on inverted rated supply:		Rs. 12,000/-

The respondent shown inverted supply Rs. 1,00,000/- during the period 01.02.2020 to 31.03.2021. As per Section 54(1) of CGST Act, 2017 the refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. Thus, refund is applicable only on the portion of outward supply and the tax paid on that supply. As per verification of GSTR-1 and GSTR-3B return for March-2021 it appeared that the outward supply of only Rs.1,00,000/- have been made for the month of March-2021 and no other supply have been made during the entire refund claim period i.e. 01.02.2020 to 31.03.2021. Hence, considering the period March-2021 and as per Annexure-B submitted by the appellant no ITC is available to them, the applicable refund as per Rule 89(5) of CGST Rules, 2017 for the relevant period is Zero (i.e. Applicable refund = $1,00,000/1,00,000 * 0 = 12,000$)

(iii) As per Notification NO. 15/2017-Central Tax (Rate) dated 28th June, 2017, that no refund of unutilized input tax credit shall be allowed under sub-section (13) of Section 54 of the said Central Goods and Service Tax Act, 2017 in case of supply of services specified in sub-item (b) of item 5 of Schedule II i.e Construction Services of the Central Goods and Services Tax Act, 2017. The appellant has provided construction services HSN 995421 as per GSTR-1 return for the month of March-2021 (HSN Code -995421 - General construction services of highways, streets, roads, railways and airfield runways, bridges and tunnels). In case of supply of services specified under sub-item (b) of Schedule-II of CGST Act, 2017, no refund of unutilized input tax credit shall be allowed under Sub-section (3) of Section 54 of CGST Act, 2017 read with Notification No. 15/2017-Central Tax (Rate), dated 28th June 2017.

Thus, the refund sanctioning authority sanctioning impugned refund of unutilized ITC on account of accumulation due to inverted duty structure is illegal, improper and resulting into sanction of erroneous refund to the appellant which required to be



recovered along-with interest and penalty. Accordingly, the adjudicating authority 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 – Palanpur, Gandhinagar Commissionerate on 24.08.2022 before the appellate authority.

CROSS EXAMINATION FILED BY RESPONDENT:

4. The respondent filed their cross examination vide letter dated 15th December 2022 (received by this office on 16th December 2022) wherein they inter-alia contended as under:

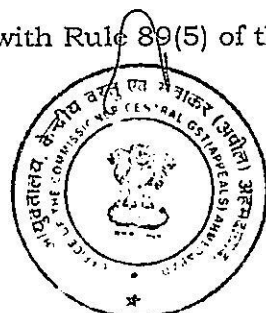
4.1 The respondent are engaged in the Work Contracts Services for government road, bridge work and they do not construct any converted houses or commercial complexes. They filed only government tenders for roads & bridge work contracts. Input raw materials i.e goods are regularly received /purchased from the date of work order till the completion of work. On allotment of such Government Tender, after completion of work, the respective Government Officer himself takes measurement of the site and prepares bill himself accordingly. Raw materials such as construction materials attracts @18% GST and Cement attracts @28% GST, while out work contract services are at concessional rate of duty attracts @12% GST. Thus, they are in position to accumulate the ITC due to inverted duty structure. Subsequently, they have claimed the input tax credit of the goods i.e raw materials and shown their liability in GSTR-1 return and discharge their outward liability in their GSTR-3B return after the completion of work. In this case, due to lack of government grant, they have received payment of only Rs. 1,00,000/- in the month of March 2021 and remaining payment will be received only after the allocation of government grant.

4.2 Further, the respondent contended that the respondent's work contracts are of composite supply of material and labour. Their nature of output supply covers under "Works contract" as defined under Section 2(119) of CGST Act, 2017. As per Rule 89(5) of the CGST Rules, 2017, they are entitled for refund claim due to inverted duty structure and accordingly, refund of input tax credit calculated as per the formula i.e 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.

Thus, refund claim calculated as under :

$$1,00,000 \text{ (Turn Over)} \times 20,21,018 \text{ (Net ITC)} / 1,00,000 \text{ (Adjusted Total Turnover)} \\ - 12,000 \text{ (Tax payable)} = 20,09,028 \text{ (Refund Applicable).}$$

Accordingly as per Section 54(3) of CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017, the appellant filed correct refund claim.



4.3 Further, the respondent also contended that vide Notification NO. 15/2017-Central Rate (Tax) dated 28th June 2017, it has been notified that no refund of unutilized input tax credit shall be allowed under sub-section (3) of Section 54 of the CGST Act, 2017 in case of supply of services specified in sub-item (b) of item 5 of Schedule-II. The supplies specified under item 5(b) of Schedule-II as:-

“ Schedule II

.....

5. Supply of services

The following shall be treated as supply of services, namely:-

(a) Renting of immovable property;

(b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation.

(c)

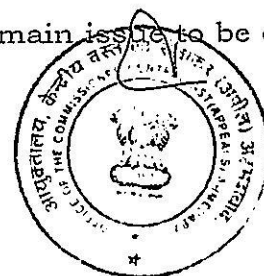
Further, they stated that the supplies specified under item 5(b) of Schedule-II as “construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupations, whichever is earlier.” In short, residential or commercial apartment construction services are not eligible for refund of inverted duty structure. The appellant contended that the restriction for Inverted Duty refund is only for residential or commercial apartment construction services; there is no restriction of the refund in case of Works Contract Services. Their services “Work Contracts Services – HSN 995421” is not a general construction service and which are not included in sub item (b) of item 5 of Schedule II as per Notification No. 15/2017-Central Tax (Rate), dated 28th June 2017.

PERSONAL HEARING:

6. Personal hearing in the matter held on 16.12.2022, Mr. Milankumar Modh, Authorized Representative, appeared on behalf of the respondent in the present appeal for cross examination. During the Personal Hearing he has submitted one written submission on their letter head dated 15.12.2022.

DISCUSSIONS AND FINDINGS:

7. I have gone through the facts of the case, available documents on record and written submissions made by the ‘appellant’. I find that the main issue to be decided in the instant case is



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

(ii) whether the adjudicating authority has erred in calculating the refund amount as it is in accordance with Rule 89 of the CGST Rules, 2017 or not.

8. I have carefully gone through the facts of the case, grounds of appeal, documents available on records, submissions made by the "appellant" in their appeal memorandum and cross examinations / submissions made by the respondent in the instant case.

9. I find that the present appeal is filed to set aside the impugned refund order on the grounds that the adjudicating authority has sanctioned erroneous refund amount to the respondent and hence order for recovery of the same along-with interest and penalty. The grounds made in present appeal mainly is that as per the Section 54(1) of the CGST Act, 2017 "Any person claiming refund of any tax period and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed."

I refer to the relevant portion of Section 54(1) of the CGST Act, 2017 which is reproduced as under:

"54. Refund of tax

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

PROVIDED that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in such form and manner as may be prescribed."

In the instant case and as per documents submitted by the respondent i.e (i) Statement of invoices to be submitted with application for Refund of unutilized ITC as Annexure-B for the period February 2020 to March 2021; (ii) GSTR-1 return for March 2021 under which outward GST tax liability declared and (iii) GSTR-9 returns for the year FY 2020-2021, I find that the respondent made supply of only Rs.1,00,000/- in the month of March 2021, which also reflected in their GSTR-1 return for March-2021 and GSTR-9. The same has also been confirmed and verified by the appellant department as well as the respondent.

I find that the appellant department does not dispute about the respondents' eligibility for refund under Inverted Duty structure as per Rule 89(5) of the CGST Rules, 2017. The respondent has shown / declared inverted supply Rs. 1,00,000/- during period 01.02.2020 to 31.03.2021 and Total Turnover Rs.1,00,000/- during period 01.02.2020 to 31.03.2021.



Further, Rule 89 (5) of the CGST Rules, 2017 defined and described the maximum refund formula, is as under:

....

Maximum Refund Amount = {(Turnover of inverted rate supply of goods) X Net ITC / Adjusted Total Turnover} – (Tax payable on such inverted rated supply)

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

- (a) *Net ITC means 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).”*

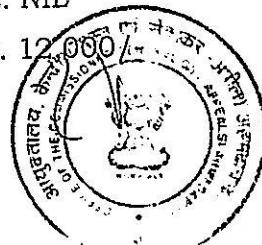
Further, the “Relevant period” is defined under Rule 89 (4) (F) of the CGST Act, 2017, is as under

“Rule 89(4)

(F) “Relevant Period” means the period for which the claim has been filed.”

From the above, I find that the refund applicable to the respondent is only on the outward supply portion and the tax paid on that supply. In the instant case, I find that the respondent has made supply of only Rs.1,00,000/- in the month of March-2021 which is the only outward supply for the entire refund claim period from February 2020 to March 2021 and on the basis of this outward supply only, the respondent claimed the refund of ITC accumulated due to inverted tax structure for the entire tax period from February 2020 to March 2021. I find that the respondent has not made any outward supply in any of the month during the claim period except in March 2021 against which the respondent claimed for refund on inverted duty structure. It is observed that, without any outward supply or any outward tax liability, there is no reason for accumulation of Input Tax Credit under inverted duty structure, hence no claim arise for refund due to inverted duty structure. I find that the respondent is also failed to submit any substantial and material evidences or documents to claim their refund for the said period due to inverted duty structure. Hence, considering the relevant period March 2021 as outward supply and it is noticed that during the March 2021 no ITC available to the respondent as per their Statement of invoices to be submitted with application for Refund of unutilized ITC as Annexure-B for the period February 2020 to March 2021 as submitted by the respondent, the applicable refund amount calculated as under:

Inverted Rated Supply	: Rs. 1,00,000/-
Adjusted Total Turnover	: Rs. 1,00,000/-
Net ITC available	: Rs. NIL
Tax paid on Inverted Rated Supply	: Rs. 12,000/-



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.

Thus, refund amount calculated as under:


Rs. 1,00,000 (Turnover of inverted rated supply) X 0 (Net ITC) / 1,00,000 (Adjusted Total Turnover) – 12,000 (Tax payable) = 0 (Refund Applicable).

From the above, I find that the refund sanctioning authority has erred in sanctioning the refund claim. Hence, I find that the *adjudicating authority* has not passed legal and proper refund order (RFD-06) while sanctioning and the same is not in accordance with Section 54 of CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017. I find that the impugned refund order is not justified and not sustainable in the eyes of law.

11. In view of the above discussion and findings, I allow the appeal filed by the department and set aside the impugned refund 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.


(Mihir Rayka)
Additional Commissioner (Appeals)
Date: .1.2023



Attested


30/1/2023

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

By R.P.A.D.

To

The Assistant Commissioner,
Central Excise & CGST, Division – Palanpur, Gandhinagar Commissionerate.
Sardar Patel Vyapar Sankul, Malgodown Road, Mehsana (N.G), Gujarat : 384 002.

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, Gandhinagar Commissionerate.
4. The Dy / Assistant Commissioner, CGST & C. Ex, Division-Kadi, Gandhinagar Commissionerate.
5. M/s. Ghasura Mohammed Asif Abbaskhan, Mahamadi Society, Sukhbag Road, Dhundhiyawadi, Palanpur (N.G), Banaskantha, Gujarat – 385 001
6. The Additional Commissioner, Central Tax (System), Gandhinagar Commissionerate.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
8. Guard File.
9. P.A. File.