



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

0792630506- टेलीफैक्स 07926305136



DIN NO : 20230364SW0000555B48

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/403/2022

19703-9709

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-ADC-98/2022-23

दिनांक Date : 20-03-2023 जारी करने की तारीख Date of Issue : 21-03-2023

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No ZS2405220302141 dated 23.05.2022 issued by Deputy Commissioner, Central Goods and Service Tax, Division-Gandhinagar, Gandhinagar Commissionerate

घ अपीलकर्ता का नाम एवं पता Name & Address:

1. Appellant

The Assistant Commissioner  
CGST, Division Gandhinagar  
Sector 10A, Nr. CH-3 Circle,  
Opp. St. Xavier's School, Gandhinagar - 382010

1. Respondent

M/s Makcur Laboratories Ltd [GSTIN No. 24AABCM0523C1ZB]  
46/5-6-7, Zank, Dehgam, Gandhinagar-382330

(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 - (vii) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (viii) 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 अपीलार्थी प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



ORDER-IN-APPEALBRIEF FACTS OF THE CASE:

The Deputy Commissioner, CGST, Division- Gandhinagar, Gandhinagar Commissionerate (herein after referred to as the "appellant" / "department") have filed the present appeal in terms of Review Order No. 01/2022-23 dated 10.11.2022 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. ZS2405220302141 (FORM-GST-RFD-06) dated 23.05.2022 (herein after referred as the "impugned refund order") passed by the Deputy Commissioner, CGST, Division - Palanpur, Gandhinagar Commissionerate (hereinafter referred as the "adjudicating authority") in the case M/s. Makcur Laboratories Ltd., 46/5-6-7, Zank, Dehgam, Gandhinagar -382 330 [GSTIN : 24AABCM0523C1ZB] (hereinafter referred to as the "respondent") amounting to Rs. 21,80,334/- under Section 54 of the CGST Act, 2017 and Rule 89 of the CGST Rules, 2017 on account of Input Tax Credit (ITC) accumulated due to inverted tax structure for the month of October 2020.

2. Brief facts of the case in the present appeal that the "respondent" is registered under [GSTIN: 24AABCM0523C1ZB] and has filed refund claim [FORM GST RFD-01] vide ARN No. AA2404422010838H dated 04.04.2022 amounting to Rs. 21,80,334/- on account of ITC accumulated due to inverted tax structure for the period October 2020 under Section 54 of the CGST Act, 2017 and Rule 89 of the CGST Rules, 2017. As per formula prescribed under Rule 89(5) of CGST Rules, 2017, Maximum Refund Amount worked out to Rs. 80,07,652.40, as calculated by taking following values, as shown in FORM RFD-01, as under :

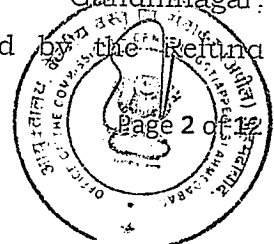
(a) Inverted rated supply	: Rs. 5,04,58,415/-
(b) Adjusted total turnover	: Rs. 5,29,35,818/-
(c) Net ITC available	: Rs. 1,42,77,239/-
(d) Tax paid on inverted rated supply	: Rs. 56,01,410/-

**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].

**Maximum Refund Amount** = [(Rs.5,04,58,415 x Rs. 1,42,77,239 / Rs. 5,29,35,818) - Rs. 56,01,410].

Whereas, the claimant has filed refund claim for Rs.21,80,334/- (CGST Rs. 10,90,167/- + SGST Rs.10,90,167/-) on account of inverted duty structure for the month of October 2020. The Refund Sanctioning Authority has sanctioned entire amount of Refund claim of Rs. 21,80,334/- on account of inverted duty structure for the month of October 2020.

Subsequently, the appellant department has reviewed the impugned refund order which had been passed by the Deputy Commissioner, CGST, Division - Gandhinagar, Gandhinagar Commissionerate, by observing that the orders passed by the Refund



Sanctioning Authority is not legal and proper, and it is not in conformity with Section 54(5) of the CGST Act, 2017 and Rules made thereunder and required / liable to be set aside, 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 Refund Sanctioning Authority has grossly erred and erroneously sanctioned refund order which is required to be set aside and excess refund amount to be recovered along with interest and penalty;
- (ii) in considering the inputs tax credit availed on inputs during past periods, which is not reflected in the FORM GSTR-2A of the relevant period i.e Month of October, 2020 for arriving at the value of "Net ITC"; and
- (iii) in considering the value of "Adjusted Total Turnover" as declared by the respondent, wherein the claimant has failed to include the value of export of goods made during October 2020;

3.1 The Rule 89(5) of the CGST Rules, 2017 as in force at the relevant time, is as follows:

*"(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].*

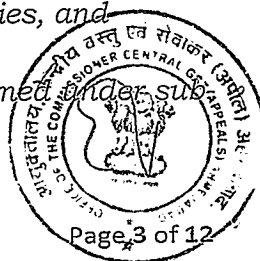
*Explanation : For the purpose of this sub-rule, the expression -*

- (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).

3.2 As per Rule 89(4) of the CGST Rules, 2017, the meaning of "Adjusted Total Turnover" and "relevant period" defined as under :

(E) "Adjusted Total Turnover" means the sum of total of the value of -

- (a) the turnover in a State or 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 (4B) or both, if any, during the relevant period,"



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

Further, the term "Turnover in a State or a Union Territory" as defined, vide Section 2(112) of the CGST Act, 2017 is as under :

*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 reverse charge basis) and exempt supplies made within a State or Union Territory by a taxable person, exports of goods or services or both and interstate 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;*

3.3 Further, sub rule (4) to rule 36 of CGST Rules, 2017 has been inserted vide Notification No. 49/2019-Central Tax, dated 09.10.2019, which provides restriction in availment of input tax credit (ITC) in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section(1) of section 37 of the CGST Act, 2017. This rule was amended via Central Tax Notification No. 40/2021-Central Tax, dated 29<sup>th</sup> December 2021. Accordingly, the taxpayer can claim input tax credit (ITC) only if it is appearing in GSTR-2B from 1<sup>st</sup> January 2022.

3.4 Vide Circular No. 135/05/2020-GST, dated 31.03.2020 issued under F.No. CBEC-20/01/06/2019-GST (Ref. Para 5.2) it has been clarified that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the claimant /respondent.

**(a) Value of "Net ITC":**

During the review, it was observed that the refund sanctioning authority has grossly erred by considering the input tax credit availed on inputs during past periods, which is not reflected in the auto-populated FROM GSTR-2A of the relevant period i.e Month of October-2020. On going through the Annexure-B submitted alongwith the said refund application by the appellant, it appears that they have claimed ITC amounting to Rs. 1,42,77,239/- as eligible for the month of October-2020 and the same value taken as "Net ITC" for calculating "Maximum Refund Amount" as per formula under Rule 89(5) of the CGST Rules 2017. Out of which, an amount of Rs. 71,76,269/- of ITC was availed on inputs during the past periods, i.e August-2020 & September-2020, which does not reflect in the FORM GSTR-2A of the relevant period i.e Month of October, 2020. Whereas, amount of Rs. 71,00,970/- of ITC is availed on inputs during the month of October-2020, which is reflected in FORM GSTR-2A of the relevant period i.e October-2020. The correct amount of "Net ITC" should be taken as Rs. 71,00,970/- for calculating the "Maximum Refund Amount". Hence, as per the provisions of Rule 89(5) of CGST Rules, 2017, the amount of Rs. 71,76,269/- of ITC availed on inputs during the past period i.e August 2020 and September 2020 which are not reflected in FORM GSTR-2A of the relevant period i.e October-2020 of the respondent, are wrongly considered for the purpose of arriving at the value of "Net ITC" which sanctioning the subject refund by the sanctioning authority.



**(b) Value of "Adjusted Total Turnover":**

During the review, it is observed that the refund sanctioning authority has wrongs considered the value of "Adjusted Total Turnover" as declared by the respondent, wherein the respondent failed to include the value of exports of goods made during October-2020.

As per the provisions under Rule 89 of CGST Rules, 2017, the value of zero rated supply (i.e exports of goods on payment of IGST) made during the relevant period is required to be included to arrive at the value of the "Adjusted Total Turnover". As per the GSTR-3B filed by the appellant for the month of October-2020, value of outward taxable supplier (other than Zero rated, NIL rated and exempted) is Rs. 79,67,556/-. The sum of both value comes to Rs. 6,09,03,440/-. Thus the value of "Adjusted Total Turnover" to be taken as Rs. 6,09,03,440/-. Whereas, the value of the "Adjusted Total Turnover" was wrongly taken as Rs. 5,29,35,884/- by the respondent while arriving the "Maximum Refund Amount" as per formula. The refund sanctioning authority has also considered the value of "Adjusted Total Turnover" as Rs. 5,29,35,884/-. The refund sanctioning authority has thus grossly erred in sanctioning the refund by considering the value of "Adjusted Total Turnover" as Rs. 5,29,35,884/- without including the value of Zero rated supply (exports of goods with payment of IGST). So, after taking into consideration the value of "Net ITC" as Rs, 71,00,970/- and the value of the "Adjusted Total Turnover" as Rs. 6,09,03,440/-, the maximum refund amount to be sanctioned to the appellant as per Rule 89(5) ibid comes to Rs. 2,81,734/- only, which worked out as below:

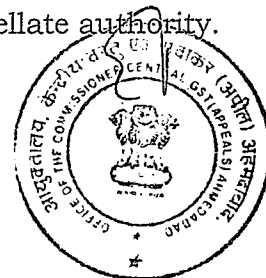
Maximum Refund amount = [Turnover of inverted rated supply of goods and services X Net ITC / Adjusted Total Turnover] – Tax payable on such inverted rated supply of goods and services].

Maximum Refund amount = [(Rs. 5,04,58,415 X Rs. 71,00,970 – Rs. 6,09,03,440.) – Rs 56,01,410].

Maximum Refund Amount = Rs. 2,81,734

The refund sanctioning authority has sanctioned refund of Rs. 21,80,334/- instead of sanctioning refund of Rs. 2,81,734/- only which resulted into excess sanction of refund of Rs. 18,98,600/- which requires to be recovered along with applicable interest / penalty.

Thus, the refund sanctioning authority sanctioning impugned refund is not legal and proper and resulting into sanction of erroneous refund to the respondent 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 filed by the Deputy Commissioner, CGST, Division – Gandhinagar, Gandhinagar Commissionerate on 15.11.2022 before the appellate authority.



**PERSONAL HEARING:**

4. Personal hearing in the matter was held on 19.01.2023 in person, Mr. Priyam Shah, 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 19.01.2023.

**CROSS EXAMINATION FILED BY RESPONDENT:**

5. During the personal hearing, the respondent filed their cross examination vide letter dated 19<sup>th</sup> January 2023 wherein they inter-alia contended as under:

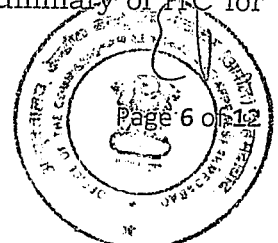
5.1 M/s. Makcur Laboratories Limited, is a company registered under GST Act and is in business of manufacturing of pharmaceutical drugs, paying higher rate of tax on inward supply of goods and outward supply is taxed @5% or @12%, accordingly eligible for refund under inverted duty structure.

The respondent has applied for inverted duty refund under section 54(3)(ii) of CGST Act along-with application, the respondent is required to attach / submit details and documents as per Circular No. 125/44/2019 dated 18.11.2019. As per the procedure, once the respondent filed an application of refund, their application is verified at department level and if any details are missing or not provided or if there is any mistake in application, the deficiency memo is issued and then it goes for final approval and payment. Meaning thereby, all details are available with department before passing any refund application.

5.2 The respondent has filed an inverted duty refund application for the month of October 2020 along-with all necessary details / documents were attached, submitted with online application and are verification, department issued RFD -06 and for payment they issued RFD 05 and issued refund of Rs. 21,80,334/-.

**1. Value of "Net ITC":**

The respondent submitted that they have attached Annexure-B and by referring it there is line item of 2017-18, 2018-19 and 2019-20 all are in form of ITC reversal due to debit note and on which respondent has not taken any input tax credit. In the month of October-202, the respondent claimed credit for invoices of October-2020 and September-2020, as input tax credit was not claimed in September month. As GST portal does not allow to amend or edit respective return once it is filed. Only option with registered person is to claim such ITC in next GSTR-3B return. Moreover, as per Rule 36(4) registered person can claim ITC as reflected in GSTR-2A plus 20%, accordingly, the respondent have claimed input tax credit for the month of September only to the extent it is reflected in GSTR-2A, till filing of return for the month of September and balance input tax credit are reflected at the time of filing of return of October month, so claimed in October 2020 return. Summary of ITC for the month of October 2020 is as under :



Year	Month	Taxable Value	IGST	CGST	SGST	Type	Eligible	Eligible Amount
2020-2021	July'20	211.86		19.07	19.07	Service	No	-
		-3036		-128	-128	Input Service ITC Reverse	No	-
	Aug'20	73091		6397	6397	Service	No	-
	Sep'20	-7525		-677	-677	Debit Note	Yes	-1354
		-11760		-1058.4	-1058.4	Debit Note	No	-
		303252		27293	27293	Capital goods	No	-
		53774248	4100982	1538325	1538325	Goods	Yes	7177632
		36437		3279	3279	Goods	No	-
		958205	13965	75225	75225	Service	No	-
	Oct'20	-8503		-765	-765	Debit Note	No	-
		671330		91201	91201	Capital goods	No	-
		41006805	4699459	1200752	1200752	Goods	Yes	7100963
		81483	14667			Goods	No	-
		3029862	5623	267888	267888	Service	No	-
Total	99456009	8834696	3128068	3129068			14277241	

From the above table, ITC claimed of Rs. 1,42,77,241/- includes claim of purchases for F Y 2020-21 only and that of September and October 2020 only. They further contended that there is no restriction for claiming ITC of earlier month of the same financial year i.e 2020-21. They further submitted that as per data submitted in Annexure-B, they have not considered any amount of ITC of previous year which is not allowed as per section 16(4). And moreover, they have also reduced their ITC where they issued debit notes. So contention of the department that respondent has claim Input Tax Credit of earlier period is not correct.

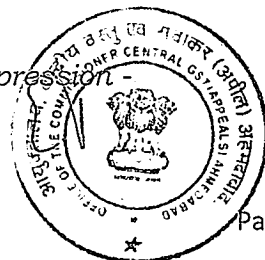
## **2. Value of "Adjusted Total Turnover":**

The appellant / department has observed that the refund sanctioning authority has wrongly considered the value of "adjusted total turnover", wherein the respondent has failed to include the value of export of goods made during October 2020. In this regard, the respondent invited attention to the formula and definition of "Adjusted Total Turnover" for the purpose of calculation. Rule 89(5):-

"[(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 purpose of this sub-rule, the expression -



(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).

[(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-rate 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-rate 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 respondent submitted that while calculating refund amount, they have not considered value of export turnover in value of adjusted total turnover, if they consider export turnover the revised refund comes to Rs. 14,97,375/- as per worksheet submitted.

Further, the respondent stated that if refund is claimed for export of goods then said value of export is required to be reduced from "adjusted total turnover", on verification of their records. The respondent has not filed refund application for export of goods for the month of October 2020, accordingly not entitled to reduced value of export for adjusted total turnover.

#### **DISCUSSIONS AND FINDINGS:**

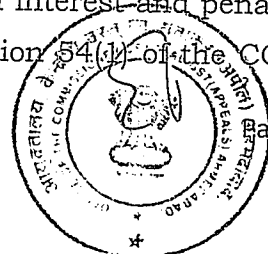
6. I have gone through the facts of the case, available documents on record and written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is

(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 read with Rule 89 of the CGST Rules, 2017 or not

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

7. 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.

8. 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) FORM GST-RFD-01 Application for refund vide ARN No. AA240422010838H (ii) Statement of invoices to be submitted with application for Refund of unutilized ITC as Annexure-B for the month of October 2020. 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. Further, the respondent has declared / claimed Input Tax Credit amounting to Rs. 1,42,77,239/- as eligible for during the relevant period i.e October 2020. Further, I find that the appellant / department has observed that out of Input Tax Credit amounting to Rs. 1,42,77,239/- (as per Annexure-B attached by the respondent), the invoices for claiming ITC of Rs. 71,76,269/- are not reflected in the GSTR-2A of the respondent against which the Input Tax Credit claimed.

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."*

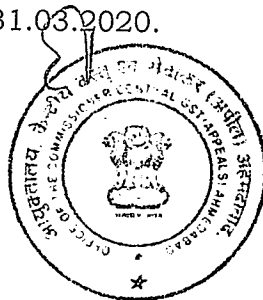
Further, I refer to the para 5.2 of Circular No. 135/05/2020-GST, dated 31.03.2020 issued under F. No. CBEC-20/01/06/2019-GST by the Central Board of Indirect Taxes and Customs, New Delhi, which is as under:

*"5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST dated 18.11.2019 stands modified to that extent."*

From the above, I find that the refund of accumulated ITC shall be restricted to the ITC as per those invoices against which the refund claimed should be reflected in the FORM-GSTR-2A of the respondent. The appellant department has observed that the Input Tax Credit claimed against those invoices are not reflected in their FORM GSTR-2A for the month of October 2020. Thus, I find that the appellant department rightly observed and found that the Net ITC considered by the refund sanctioning authority is wrong while calculating "Maximum Refund Amount".

Further, I find that sub-rule (4) to the Rule 36 of the CGST Rules, 2017 has been inserted vide Notification No. 49/2019-Central Tax, dated 9.10.2019, which also restricts in availment of input tax credit (ITC) in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of Section 37 of the CGST Act, 2017. This rule was amended vide Notification No.40/2021-Central Tax dated 29<sup>th</sup> December 2021. Accordingly, the tax payer / the respondent can claim Input Tax Credit (ITC) only if it is appearing in GSTR-2B with effect from 1<sup>st</sup> January 2022.

In view of the above, I find that the reviewing authority has rightly observed that the respondent availed ITC amounting to Rs. 71,76,269/- out of the Net ITC Rs. 1,42,77,239/- as claimed which are not reflected in their FORM GSTR-2A of the relevant period i.e Month of October-2020 and an amount of Rs. 71,00,970/- of ITC is availed on inputs during the month of October 2020 which is reflected in the FORM GSTR-2A of the relevant period i.e Month of October 2020. Hence, I find that the refund sanctioning authority has erred in considering "Net ITC" amount taken as Rs. 1,42,77,239/- instead of taking "Net ITC" as Rs 71,00,970/- for calculating "Maximum Refund Amount" according to the Rule 89(5) of the CGST Rules, 2017. Therefore, I find that the "Maximum Refund Amount" calculated by the adjudicating authority is not in consonance with the Rule 89(5) of the CGST Rules, 2017 and as per Circular No. 135/05/2020-GST, dated 31.03.2020.



9. I further refer to the Rule 89(4) of the CGST Rules, 2017 wherein meaning of "Adjusted Total Turnover" and "Relevant Period" have been given, and further the meaning of Turnover in a state or a Union Territory" is defined as per Section 2(112) of the CGST Act, 2017, which is re-produced as under:

*Section 2 (112):- "turnover in state" or "turnover in Union territory" means the aggregate value of all taxable supplied (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 interstate 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, I find that as per Section 2 (112) of the CGST Act, 2017 and Rule 89(5) of the CGST Rules, 2017, while calculating Maximum Refund Amount, the value of zero rated supply (i.e exports of goods or services or both) should be included while computing the "Adjusted total turnover". I find that the respondent has made exports during the claimed period and not included the value of exports of goods made during the relevant period and taken it as Rs. 5,29,35,884/- instead of taking Rs. 6,09,03,440/- as "Adjusted total turnover" and reason for not including the value of exports of goods as they have not filed the refund claim is not appears cogent and justified. As per the definition and formula, the value of exports of goods should be included while deriving the term "Adjusted total Turnover" for calculating the Maximum Refund Amount. Thus, I find that the refund sanctioning authority has erred in sanctioning the refund and find that the impugned refund order of Rs. 21,80, 334/- passed is not proper in accordance with Rule 89 of the CGST Act, 2017, not justified and not sustainable in the eyes of law.

10. 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.

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

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

*(Signature)*  
20/03/23

(Mehir Rayka)  
Additional Commissioner (Appeals)  
Date: 20.3.2023

Attested

*(Signature)*  
21/3/2023  
(Tejas J Mistry)  
Superintendent,  
Central Tax (Appeals), Ahmedabad



By R.P.A.D.

To

The Deputy Commissioner,  
Central Excise & CGST, Division – Gandhinagar, Gandhinagar Commissionerate.  
Sector 10-A, Nr. CH-3 Circle, Opp. St Xavier's School, Gandhinagar – 382 010.

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-Gandhinagar, Gandhinagar Commissionerate.
5. M/s. Makcur Laboratories Limited, 46/5-6-7, Village – Zak, Tal – Dehgam, Dist. Gandhinagar, Gujarat – 382 330
- 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.

