



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  
 07926305065- टेलिफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)28/EA-2/North/Appeals/2019-20 /15297 15296 TO 15301

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-JC-014-2020-21  
 दिनांक Date : 29-07-2020 जारी करने की तारीख Date of Issue 05/08/2020

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित  
 Passed by Shri. Mukesh Rathor, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No 005.1/2019-20 दिनांक: 27.05.2019 issued by Asst  
 Commissioner, Div-V, Central Tax, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Five Square Trading Company**  
**Ahmedabad**

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax ( Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in.



## ORDER IN APPEAL

The below mentioned departmental appeal have been filed by the Assistant Commissioner, Division-V, CGST & Central Excise, Ahmedabad North (hereinafter referred to as the 'appellant') under Section 107 of the Central Goods and Services Tax Act, 2017, against the following Orders-in-Originals (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, CGST, Division-V, Ahmedabad North (*hereinafter referred to as 'adjudicating authority'*) in the matter of refund, the details of which is as follows:

Sr. No.	Name of the respondent	OIO No. & date issued under Form GST RFD 06	Review Order No. passed by the Commissioner, CGST & C.Ex., Ahmedabad North Comm'r rate [in terms of Section 107(2) of the CGST Act, 2017]	Appeal No.	Amount Under Dispute (inRs.)
1	2	3	4	5	6
1	M/s. Five Square Trading Company, 6-973, Lilajpur Road, Dholka, Ahmedabad, Gujarat  24ACAPM2174P1ZE (GSTIN)	005.1/2019-20 dated 27.05.2019	27/2019-20 dated 27.11.2019	V2(GST)28/EA2/North/Appeals/19-20	Rs.11094/- (IGST)

2. Briefly, the facts of the case are that the respondent filed a refund claim on dated 29.04.2019 amounting to Rs. 78,184/- (IGST) in terms of Section 54 of the Central Goods and Services Tax Act, 2017. The adjudicating authority vide his impugned order, mentioned in the table *supra*, sanctioned the refund claim.

3. On the refund claims being sent for post audit, it was observed by the Assistant Commissioner, Audit Cell vide letter F.No. VI/1(b)-23/Post-Audit/Div.V/2017-18 dated 25.11.2019 that excess refund has been sanctioned to M/s. Five Square Trading Company. The maximum amount of refund claim is calculated as per the formula given in the Rule 89 of the CGST Act, 2017 but the adjudicating authority has taken the value for turnover of zero-rated supply of goods is 6,67,685/- (value of Outward supply zero rated) instead of Rs. 5,72,947/- (FOB Value) as mentioned in Shipping Bill No. 3015319 dated 21.02.2018.

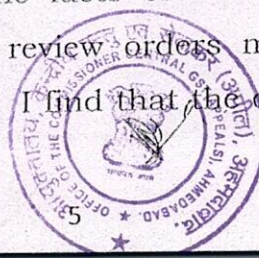


Thus the lower of the above value should be taken for refund computation as per Para 9 of Circular No. 37/11/2018-GST dated 15.03.2018. The adjudicating authority has sanctioned the refund amounting to Rs. 78,184/- instead of amounting Rs. 67,090/-. As such, the Adjudicating Authority has erred by sanctioning the excess refund amount of Rs. 11,094/- for IGST. Further, The Commissioner, CGST & C.EX., Ahmedabad North Commissionerate vide his aforementioned Review Order, authorized the Assistant Commissioner, Div-V, CGST & CX., Ahmedabad North to file the aforementioned appeal raising the following grounds:

- That, in GSTR-3B for the month of Feb-2018 the claimant has furnished the value of exported goods in Nil rate/Exempted table by mistake
- That the claimant has filed 02 refund claims for zero rated supply (export) for the quarter Jan-Mar 2018 whereas he was required to submit only one refund application for the said export.
- That the Shipping Bill No. 3015319 dated 21.02.2018 is verified from the website [www.icegate.gov.in](http://www.icegate.gov.in) and found in order. However, it is noticed that the value furnished in the refund claim is higher than the value furnished in the Shipping Bill/ Invoice so the amount in that proportion has been refunded in excess.
- That the value for turnover of zero-rated supply of goods is 6,67,685/- (value of Outward supply zero rated) instead of Rs. 5,72,947/- (FOB Value) as mentioned in Shipping Bill No. 3015319 dated 21.02.2018.
- That, as per Para 9 of Circular No. 37/11/2018-GST dated 15.03.2018 issued from F.No. 349/47/2017-GST by the GST Policy wing, Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, New Delhi the refund claim should be sanctioned actually for Rs. 67,090/-. Hence the adjudicating authority has sanctioned excess refund of Rs. 11,094/- (Rs.78,184/- (-) Rs. 67090/-);
- That the adjudicating authority has erred by sanctioning the excess refund amount of Rs. 11,094/- IGST which is required to be recovered alongwith interest.

4. Personal hearing in the matter was held on 14.07.2020. Shri Dipak V. Shah, Advocate, appeared before me on behalf of the respondent and he has submitted his written submission on dated 14.07.2020 at the time of personal hearing.

5. I have gone through the facts of the case, the impugned original orders, the grounds raised in the review orders mentioned *supra* and written submission provided by respondent. I find that the only question to be decided is



whether the refund granted to the respondent vide the impugned OIOs, is excess sanctioned or otherwise.

6. The matter deals with refund of ITC on Export of Goods & Services and therefore before moving forward, let me first reproduce the relevant rules which enables a person to seek refund of tax in such a situation, viz.

**RULE 89. Application for refund of tax, interest, penalty, fees or any other amount. —**

[(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 -

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

Where, -

- (A) "Refund amount" means the maximum refund that is admissible;
- (B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;
- (C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;
- (D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely :-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

- [(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.]

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

**Para 9 of Circular No. 37/11/2018-GST dated 15.03.2018:**

**9. Discrepancy between values of GST invoice and shipping bill/bill of export**  
: It has been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under Section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill/bill of export.

**9.1 During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill/bill of export should be examined and the lower of the two values should be sanctioned as refund.**

7. I have carefully gone through the facts of the case on records, grounds of the Appeal and written submission submitted by the respondent. The primary ground raised by the department is that the value of export as per GST invoice declared by the respondent is differed from its corresponding value of export as per shipping bills i.e. FOB value. I find that that the respondent has mentioned in their written submission that their zero rated supplies of goods and adjusted total turnover is same amount in figure because their total turnover of Rs. 667672/- by one export bill. There is nothing mentioned about Circular No. 37/11/2018-GST dated 15.03.2018 by the respondent in their written submission . Further I find that it is very crystal clear from the Para 9.1 of Circular No. 37/11/2018-GST dated 15.03.2018 that during the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill/bill of export should be examined and the lower of the two values should be sanctioned as refund. Thus, I find that the ground raised in the departmental appeal, that the adjudicating authority has erred by sanctioning the excess refund amount of Rs. 11094/-, is tenable.

8. In view of the foregoing, I find that there is merit in the departmental appeal and therefore, I set aside the impugned order to the extent they have erroneously sanctioned the excess refund amounting to Rs. 11,094 (IGST).



9. The departmental appeal is allowed and the impugned order is set aside to the extent it has erroneously sanctioned the excess refund as mentioned in above para. The prayer of the department for recover the amount erroneously refunded in excess to the respondent, with interest is also allowed.

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

10. The appeal filed by the department-appellant stands disposed of in above terms.

मुकेश राठौर  
29/07/2020

(मुकेश राठौर)

संयुक्त आयुक्त(अपील्स)

Date : .07.2020

Attested

(D.A. Parmar)  
Superintendent(Appeals),  
Central Tax, Ahmedabad



By R.P.A.D.

To,  
M/s. Five Square Trading Company,  
(GSTIN : 24ACAPM2174P1ZE)  
6-973, Lilajpur Road, Dholka,  
Ahmedabad, Gujarat

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner(Appeals), CGST, Ahmedabad
3. The Commissioner, Central Tax, Ahmedabad North Commissionerate.
4. The Assistant Commissioner, Central Tax Division- V, Ahmedabad North Commissionerate.
5. The Assistant Commissioner, System, Central Tax, Ahmedabad North Commissionerate.
6. Guard File.
7. P.A.