


| | | |
|---|---|--|
|  <p>सत्यमेव जयते</p> | <p>आयुक्त का कार्यालय Office of the Commissioner केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय Central GST, Appeal Ahmedabad Commissionerate जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद-380015 GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad Phone: 079-26305065 Fax: 079-26305136 E-Mail : commrappl1-cexamd@nic.in</p> | |
|---|---|--|

By Regd. Post

DIN NO. : 20211264SW000000DF86

| | | |
|-----|--|---|
| (क) | फाइल संख्या / File No. | GAPPL/ADC/GSTD/14-15 & 34/2021-APPEAL/4595/4600 |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date | AHM-CGST-002-APP-JC-69 to 71/2021-22 & 06.12.2021 |
| (ग) | पारित किया गया / Passed By | श्री मिहिर रायका, संयुक्त आयुक्त अपील Shri Mihir Rayka, Joint Commissioner (Appeals) |
| (घ) | जारी करने की दिनांक / Date of issue | 06.12.2021 |
| (ङ) | Arising out of RFD-06 Orders, (i) Order No. ZX2408200022442 dated 03.08.2020, (ii) Order No. ZN2409200031376 dated 02.09.2020, (iii) Order No. ZY2411200146589 dated 11.11.2020 issued by Assistant/Deputy Commissioner, Division - I, Ahmedabad North | |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant | The Assistant/Deputy Commissioner, CGST & C.Ex., Division-I (Naroda) Ahmedabad North, Address :- Ground Floor, Jivabhai Mansion Building, Ashram Road, Ahmedabad-380009 |
| | प्रतिवादी का नाम और पता / Name and Address of the Respondent | M/s Ventil Flowserve Pvt. Ltd. (GSTIN-24AAECV0395G1ZD) Address :- 4-A, 50 Paiki, Krishna Gopal Estate, Forge and Blower Compound, Naroda, Ahmedabad-380025 |

| | |
|-------|---|
| (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 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 following appeals have been filed by the Assistant/Deputy Commissioner, CGST & C. Ex., Division - I, Ahmedabad North Commissionerate (hereinafter referred as '*appellant*' / '*department*') in terms of Review Orders issued under Section 107(2) of the CGST Act, 2017 (hereinafter referred as '*the Act*') by the Reviewing Authority against RFD-06 Orders (hereinafter referred as '*impugned orders*') passed by the Assistant/Deputy Commissioner, CGST & C. Ex., Division - I, Ahmedabad North (hereinafter referred as '*adjudicating authority*') in the cases of **M/s. Ventil Flowserve Private Limited**, 4-A, 50 paiki, Krishna Gopal Estate, Forge and Blower Compound, Naroda, Ahmedabad (hereinafter referred as '**Respondent**').

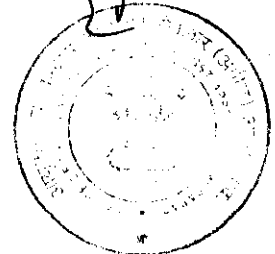
| Appeal No. & Date | Review Order No. & Date | RFD-06 Order No. & Date |
|--|-----------------------------|-------------------------------------|
| GAPPL/ADC/GSTD/14/2021- APPEAL Dated 28.01.2021 | 50/2020-21 Dated 22.01.2021 | ZS2408200022442 Dated 03.08.2020 |
| GAPPL/ADC/GSTD/15/2021- APPEAL Dated 28.01.2021 | 49/2020-21 Dated 22.01.2021 | ZN2409200031376 Dated 02.09.2020 |
| GAPPL/ADC/GSTD/34/2021- APPEAL Dated 06.05.2021 | 04/2021-22 Dated 26.04.2021 | ZY2411200146589 Dated 11.11.2020 |

2(i). Brief facts of the case are that the '*Respondent*' holding GSTIN No. 24AAECV0395G1ZD had filed following refund applications :

| Sr. No. | Period | Amount of Refund claim of CGST & SGST |
|---------|----------------------|--|
| 1 | 01.01.20 to 31.03.20 | Rs.34,71,688/- |
| 2 | 01.04.20 to 30.06.20 | Rs.35,28,953/- |
| 3 | 01.07.20 to 30.09.20 | Rs.23,84,779/- |

The refund claims were preferred under Section 54 of the CGST Act, 2017 on account of Exports of Goods / Services - without payment of Tax (Accumulated ITC). The adjudicating authority has sanctioned the aforesaid refund claims vide '*impugned orders*'.

2(ii). In the grounds of appeal the '*Department*' has submitted that during the course of post-audit of the above said refund claims, it was observed that -



"As per para 9.1 of Circular Number 37/11/2018-GST dated 15.03.2018, it has been clarified 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 exports should be examined and the lower of the two values should be sanctioned as refund ..."

In view of aforesaid refund claims the department has observed that the value of export as per GST Invoices declared is differed from which its corresponding value for export as per shipping bill i.e. FOB value. Accordingly, the *department* has stated that lower value should be taken for the computation of refund as per Circular No. 37/11/2018 - GST dated 15.03.2018. The details of difference of value as observed by department is as under :

| Period | Refund amount sanctioned | GST invoice Value | Shipping Bill Value (FOB value) / Lower value |
|----------------------|--------------------------|-------------------|---|
| 01.01.20 to 31.03.20 | Rs.34,71,688/- | 2,77,16,004/- | 2,71,45,887/- |
| 01.04.20 to 30.06.20 | Rs.35,28,953/- | 1,77,10,213/- | 1,64,44,325/- |
| 01.07.20 to 30.09.20 | Rs.23,84,779/- | 2,26,93,326/- | 2,13,77,536/- |

2(iii). Considering the above facts the department has stated in the grounds of appeal that the appellant has been failed to declare correct value in column (1) in Statement - 3A [Rule 89(4)]. Accordingly, considering the lower value among the FOB value and Invoice value the *department* has worked out the admissible amount of refund in terms of Rule 89(4) of the CGST Rules, 2017 as under :

| Turnover of Zero rated supply of goods (1) | Net Input Credit (2) | Adjusted total Turnover (3) | Refund amount admissible (1*2/3) | Refund Sanctioned | Excess amount refunded |
|--|----------------------|-----------------------------|----------------------------------|-------------------|------------------------|
| 27145887 | 3787698 | 30238847 | 3400276 | 3471688 | 71412 |
| 16444325 | 3914700 | 19646100 | 3276711 | 3528953 | 252242 |
| 21377536 | 3064957 | 29165830 | 2246507 | 2384779 | 138272 |

2(iv). In view of above, the '*Department*' has submitted that while passing the aforesaid impugned orders, the adjudicating authority, failed to ascertain correct values of Turnover of zero rated supply of goods and services and Net ITC in statement - 3A [rule 89(4)], which resulted into excess payment of refund (as mentioned in above table) as per formula prescribed under Rule 89(4) of the CGST

Rules, 2017. Considering the said facts the department has stated that the impugned orders passed by the adjudicating authority are not proper and legal and therefore prayed for relief as under :

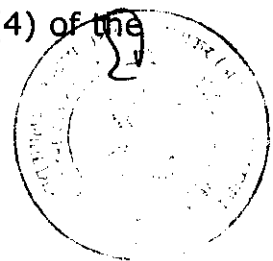
- To set aside the impugned orders to the extent of excess amount of refund so sanctioned.
- To pass order directing to the original authority to recover the amount erroneously refunded to the claimant with interest
- To pass any other order(s) as deemed fit in the interest of justice.

Personal Hearing :

3. Personal Hearing in the matter was through virtual mode offered to the 'Respondent'. In response to said PH letters the Respondent has informed through letter dated 24.11.2021 that they have already deposited Tax Amount Rs.3,23,654/- on 05.03.2021 vide CIN-HDFC21032400042360. Also deposited Rs.138272/- + Interest Rs.27655/- on 26.08.2021 vide CIN - HDFC21082400486634. The Respondent has also produced the copy of relevant challans and requested to consider the said tax payment and drop the proceedings. Further, Respondent has also informed that they do not wish to be heard in person.

Discussion and Findings :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Department' in the Appeal Memorandum. I have also gone through the documents / submissions made by the 'Respondent' on 24.11.2021. I find that the Respondent has preferred refund claims of the ITC accumulated on account of Export of Goods / Services without payment of Tax and the adjudicating authority has sanctioned the said refund claims vide impugned orders. However, during the course of post audit of refund claims so sanctioned by the adjudicating authority, the department has observed that the Respondent has not declared the correct value in terms of CBIC Circular No. No. 37/11/2018 - GST dated 15.03.2018. I find that while passing of such refund claims the refund sanctioning authority has to examine the value declared by claimant and lower value among value declared in GST Invoice and value declared in corresponding Shipping Bills / Bill of Export is to be considered. Thereafter, admissible amount of refund is to be worked out in terms of formula as prescribed in Rule 89(4) of the



CGST Rules, 2017. However, in present matter I find that the adjudicating authority has not examined the value properly and thus sanctioned the excess amount of refund. Accordingly, the '*Adjudicating Authority*' has sanctioned the excess amount of refund to the '*Respondent*' and thus the Refund Orders issued in Form RFD-06 which are being challenged in the present appeals are found to be not proper and legal.

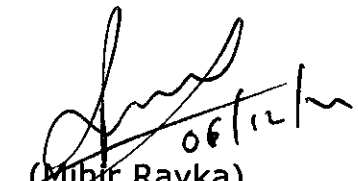
4(ii). The Respondent has accepted the view of department and paid/deposit the excess amount of refund so sanctioned to them. The Respondent has informed that they have paid the same and thus requested to drop the proceedings. The details provided by Respondent vide letter dated 24.11.2021 are as under :

| Refund sanctioned excess | Amount paid/deposit by Respondent | Interest paid | Challan No. & Date |
|--------------------------|-----------------------------------|---------------|---------------------------------------|
| 71412 | 323654 | | CPIN : 21032400042360 / 05.03.2021 |
| 252242 | | | |
| 138272 | 138272 | 27655 | CPIN : 21082400486634 / 26.08.2021 |

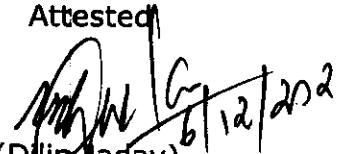
5. In view of above discussions, I find that the impugned orders are not legal and proper and therefore, require to be set aside. Accordingly, the appeals filed by the '*Department*' are allowed and set aside the '*impugned orders*' to the extent of excess amount of refund so sanctioned.

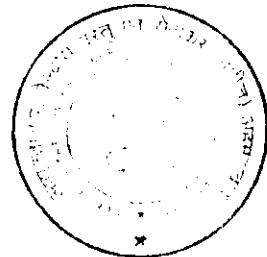
6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

6. The appeals filed by the '*Department*' stand disposed off in above terms.


(Mihir Rayka)
Joint Commissioner (Appeals)

Date: 06.12.2021

Attested

(Dilip Jadav)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,
The Assistant / Deputy Commissioner,
CGST & C. Ex., Division – I,
Ahmedabad North.

Appellant

M/s. Ventil Flowserve Private Limited,
4-A, 50 paiki, Krishna Gopal Estate,
Forge and Blower Compound, Naroda, Ahmedabad

Respondent

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-I, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File

