



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद-380015  
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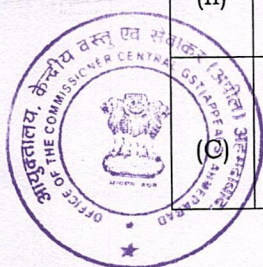


### By Regd. Post

DIN NO. : 20220364SW0000823661

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTD/26/2021-APPEAL / 6675-63
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-96/2021-22 & 04.03.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त अपील Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	04.03.2022
(ङ)	Arising out of Review Order No. 01/2021-22 dated 12.04.2021 against RFD-06 Order No. ZY2409200325010 dated 22.09.2020 issued by the 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 Commssionerate Address :- Ground Floor, Jivabhai Mansion Building, Ashram Road, Ahmedabad-380009
	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Neelcon India (GSTIN – 24AAOFN4215A1ZQ), Address:- 11, 3, Vithal Plaza ,Opp. UGVCL, Nava Naroda, Ahmedabad – 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 – (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 <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, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



**ORDER-IN-APPEAL****Brief Facts of the Case :**

The following appeal has been filed by the Assistant Commissioner, CGST & C. Ex., Division – I, Ahmedabad North Commissionerate (hereinafter referred as '*appellant*' / '*department*') in terms of Review Order issued under Section 107(2) of the CGST Act, 2017 (hereinafter referred as '*the Act*') by the Reviewing Authority against RFD-06 Order No. ZY2409200325010 (hereinafter referred as '*impugned order*') passed by the Deputy Commissioner, CGST & C. Ex., Division – I, Ahmedabad North (hereinafter referred as '*adjudicating authority*') in the case of **M/s. Neelcon India**, 11,3, Vithhal Plaza, Opp. UGVCL, Nava Naroda, Ahmedabad (hereinafter referred as '**Respondent**').

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date
GAPPL/ADC/GSTD/26/2021- APPEAL Dated 16.04.2021	01/2021-22 Dated 12.04.2021	ZY2409200325010 Dated 22.09.2020

**2(i).** Briefly stated the facts of the case are that the '*Respondent*' holding GSTIN No. 24AAOFN4215A1ZQ had filed a refund claim of Rs.1,23,510/- of CGST and SGST for the period from 01.05.2020 to 31.05.2020 under Section 54 of the CGST Act, 2017. The claim was filed on account of specified purpose of supplied goods under Notification No. 40/2017-Central Tax(Rate) and 40/2017-State Tax(Rate) both dated 23.10.2017. The *adjudicating authority* has sanctioned the said refund claim of Rs.1,23,510/- under *impugned order* dated 22.09.2020. During post audit the *department* has observed that the adjusted Turnover and Net ITC mentioned by the *Respondent* in the refund application is not matching with the figures shown in GSTR-3B of the period May, 2020. As per GSTR – 3B the adjusted Turnover comes to Rs.9,38,000/- and the Net ITC comes to Rs.81,472/-.

**2(ii).** In the statement of facts the '*Department*' has submitted that "As per Section 54(3) of the CGST Act, 2017, a registered person may claim refund of unutilized input tax credit at the end of any tax period. A tax period is the period for which return is required to be furnished. This claim pertains to May, 2020. Notification No. 40/2017-Central Tax (Rate) dated 23.10.2017 exempts the intra-state supply of taxable goods by a registered supplier to a registered recipient for export,



from so much of the central tax leviable thereon under Section 9 of the said Act, as is in excess of the amount calculated at the rate of 0.05 per cent. It is observed that the goods cleared by them to M/s. Rexza Colours and Chemicals vide invoice No. GST/001 dated 05.05.2020 at Rs.6,90,000/- on payment of CGST and SGST of Rs.690/- have been exported by the buyer of the said goods. The Net ITC comes to Rs.81,472/- and computing the refund based on value of inverted supply valued Rs.6,90,000/- comes to Rs.59,241/-."

**2(iii).** The 'Department' has accordingly, submitted that the refund sanctioned vide RFD-06 Order No. ZY2409200325010 dated 22.09.2020 is not legal and proper as it is not in conformity with Section 54 of the CGST Act, 2017. Therefore, it requires/liable to be set aside as far as excess amount refunded. The department has further submitted that Section 54(3) of the CGST Act, 2017 allows refund of unutilized input tax credit at the end of any tax period and such refund is to be calculated as per formula given under Rule 89(5) of the CGST Rule, 2017. Accordingly, in view of above the department has calculated the admissible amount of refund as under :

$$\text{Refund} = [ (690000 \times 81472 / 938000) - 690 = 59241/- ]$$

According to above formula the admissible amount of refund comes to Rs.59,241/- whereas the *adjudicating authority* has sanctioned refund amounting to Rs.1,23,510/-. Thus the *adjudicating authority* has sanctioned excess amount of refund of Rs.64,269/-.

**2(iv).** Considering the above facts the Department has submitted that the *impugned order* is not proper and legal and accordingly, makes prayer for relief as under :

- To set aside the *impugned order* to the extent of excess amount refunded of Rs.64,269/-.
- To pass an 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.** The Personal Hearing was offered to the *Respondent* for three times in the present matter by the appellate authority. The matter was posted for Personal Hearing through virtual mode on 08.12.2021, 17.12.2021 and on 06.01.2022. For informing the said date of PH



necessary communication was made to the *Respondent* vide following letters by the appellate authority :

- (i) GAPPL/ADC/GSTD/26/2021-APPEAL/4524 TO 4525 dated 02.12.21
- (ii) GAPPL/ADC/GSTD/26/2021-APPEAL/5052 TO 5053 dated 10.12.21
- (iii) GAPPL/ADC/GSTD/26/2021-APPEAL/5356 dated 29.12.21.

Through aforesaid letters the date of PH was informed and also specifically asked to the *Respondent* that "if they wish to be heard in person then necessary information Viz. the name, valid e-mail id and Vakalatnama of the authorized representative who would be attending the virtual hearing, may be provided well in advance." However, no response has been received by the appellate authority from *Respondent* in this regard.

### **Discussion and Findings :**

4. I have carefully gone through the facts of the case available on records, submissions made by the 'Department' in the Appeal Memorandum. I find that the '*Respondent*' has preferred refund claim of Rs.1,23,510/- of CGST and SGST for the period from 01.05.2020 to 31.05.2020 under Section 54 of the CGST Act, 2017. The Ministry of Finance vide Notification No. 40/2017-Central Tax (Rate) dated 23.10.2017 exempts the intra-State supply of taxable goods by a registered supplier to a registered recipient for export, from so much of the Central Tax leviable thereon under Section 9 of the said Act, as is in excess of the amount calculated at the rate of 0.05 per cent. In this regard, the *department* has submitted in the appeal memorandum that the *Respondent* has cleared the goods to M/s. Rexza Colours and Chemicals vide invoice No. GST/001 dated 05.05.2020 at Rs.6,90,000/- on payment of CGST and SGST of Rs.690/- which have been subsequently exported by the buyer. Accordingly, the *Respondent* had filed the refund claim for Rs.1,23,510/- which was sanctioned by the *adjudicating authority* vide *impugned order*.

5. As regards to aforesaid *impugned order*, the *department* has observed that the adjusted Turnover and Net ITC mentioned by the *Respondent* in the refund application is not matching with the figures shown in GSTR-3B of the period May, 2020. The adjusted Turnover was Rs.9,38,000/- and the Net ITC was Rs.81,472/- as observed by the *department*. Considering the said amount of Net ITC and Adjusted Turnover by the *department* computed the refund based on value of inverted supply valued Rs.6,90,000/- comes to Rs.59,241 as admissible



amount of refund. Thus, the *adjudicating authority* has sanctioned excess amount of Refund of Rs.64,269/-. Accordingly, the *department* has preferred the present appeal against said *impugned order*.

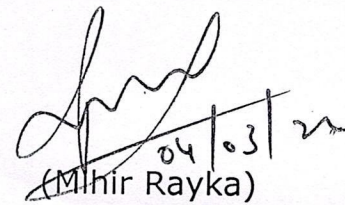
6. Further, before deciding the present departmental appeal three different letters were issued by the office of the appellate authority to the *Respondent*. Through said three letters the *Respondent* has been given three Personal Hearing opportunities. However, the *Respondent* is not responding to the said letters of PH. Therefore, this appellate authority has no other option, except to decide the matter ex-parte.

7. On going through the submissions of the *department* I find that the *adjudicating authority* has sanctioned the excess amount of refund to the *Respondent* in the present matter. As per the Net ITC Rs.81,472/-, Adjusted Turnover Rs.9,38,000/- and Inverted Supply Rs.6,90,000/- the admissible amount of Refund comes to Rs. 59,241/- in terms of the formula prescribed in Rule 89(5) of the CGST Rules, 2017. Therefore, I find that the *adjudicating authority* has sanctioned the excess amount of Refund of Rs.64269/- to the *Respondent*.

8. In view of above discussions, I find that the *impugned order* is not legal and proper and therefore, require to be set aside to the extent of sanction of excess amount of refund of Rs.64,269/-. Accordingly, the appeal filed by the '*Department*' is allowed and set aside the '*impugned order*' to the extent of sanction of excess amount of Refund of Rs.64269/-.

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

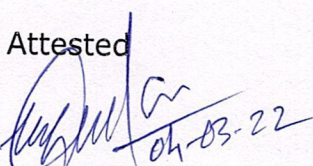
The appeal filed by the '*Department*' stand disposed off in above terms.

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 04.03.2022

Attested

  
(Dilip Jadav)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad



By R.P.A.D.

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

Appellant

M/s. Neelcon India,  
11,3, Vithhal Plaza,  
Opp. UGVCL, Nava 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

