



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals 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



आजादी का
अमृत महोत्सव

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DIN NO. : 20230164SW000000A2DC

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTD/364/2022 / 2415-20
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-136/2022-23 and 17.01.2023
(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	18.01.2023
(ङ)	Arising out of Order-In-Original No. ZR2403220109883 dated 08.03.2022 issued by The Assistant Commissioner, CGST, Division – IV, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	The Assistant / Deputy Commissioner, CGST & C.Ex., Division – IV, Ahmedabad North Commissionerate
	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Acme Diet Care Pvt. Ltd (GSTIN-24AADCA2848N1ZI) 14/A, Panchratna Industrial Estate, Sarkhej Bavla road, Changodar, Ahmedabad, Gujarat-382213
(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 appeal has been filed by the Assistant Commissioner, CGST & C.Ex., Division-IV [Changodar], Ahmedabad- North (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 (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, CGST, Division-IV, Ahmedabad-North (hereinafter referred as '*adjudicating authority*') in the case of M/s. Acme Diet Care Pvt. Ltd., 14/A, Panchratna Industrial Estate, Sarkhej-Bavla Road, Changodar, Ahmedabad - 382213 (hereinafter referred as '*Respondent*').

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date
GAPPL/ADC/GSTD/364/2022- APPEAL, dated 06.09.2022	14/2022-23, dated 29.08.2022	ZR2403220109883, dated 08.03.2022

2(i). Brief facts of the case are that the '*Respondent*' holding GSTN No. 24AADCA2848N1ZI had filed refund claim of Rs.1,81,229/- of accumulated ITC due to export without payment of duty vide ARN No. AA2402220936881, dated 23.02.2022 under Section 54 of the CGST Act, 2017. After verification of said refund claim the *adjudicating authority* found the claim in order and accordingly sanctioned the same vide '*impugned order*'.

2(ii). During review of said refund claim, it was observed that the respondent claimant has filed refund claim on account of ITC accumulated due to Inverted tax structure for the period of November,2021 and said claim is sanctioned by the adjudicating authority. However, on going through the refund claim, it is noticed that higher amount of refund has been sanctioned to the *respondent* than what is actually admissible to them in accordance with Rule 89(5) of CGST Rules, 2017 read with Section 54(5) of CGST Act, 2017. It was observed that the claimant has taken wrong values of turnover of inverted rated supply of goods and tax payable on such inverted rated supply of goods in the formula of calculating the refund which resulted in excess refund of Rs. 75,343/-.

2(iii). In view of above, the appellant / department has filed the present appeal on the following grounds:



F.No. : GAPPL/ADC/GSTD/364/2022-APPEAL

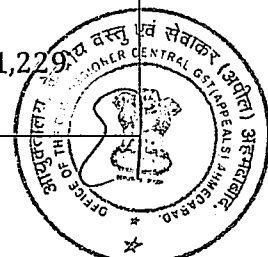
- i. The refund sanction order for Rs.1,81,229/- on account of ITC accumulated due to Inverted Tax Structure is not legal and proper as the same is not in conformity with Rule 89(5) of CGST Rules, 2017 as it is wrongly calculated .
- ii. Details provided of outward supply in GSTR-1 that the respondent has made the outward supply with payment of tax at the GST rate of 0.1%, 5% and 12%. However, as per Annexure-B submitted by the respondent, they have inward supply of inputs at the rate of GST 5%, 12% and 18%. Thus it is observed that whole outward supply falls under inverted rated supply as the highest rate of GST of outward supply 12% is lower than the highest rate of GST on its inward supply i.e. 18%. As per GSTR-1 for November, 2021 the outward supply details are as under :

Outward supply details as per GSTR-1 for the month of Nov-2021.				
Outward supply @0.1%	Outward supply @5%	Outward supply @12%	Credit Note 0.1%	Total Net Outward supply (1+2+3+4)
(1)	(2)	(3)	(4)	(5)
168000	9487673	1012002	338250	10329425
168	474384	121440	338	595654

- iii. On scrutiny of RFD-06 dated 08.03.2022, it is observed that for calculating the inverted rated supply of goods and corresponding tax payable, the respondent and the adjudicating authority has taken only the values of the outward supply cleared at the rate of 0.1% i.e. 1,68,000/- / Rs.168 and 5% i.e. Rs.94.87.673/- / Rs.474384/- . The respondent has not adjusted the values of credit note i.e. Rs.3,38,250/- / Rs.338/- and not included the values of outward supply cleared @12% credit i.e. Rs.10,12,002/- / Rs.1,21,440/- . This has resulted in excess refund sanctioned as below:-

(Amount in Rs.)

	Turnover of inverted rated supply of goods (1)	Tax payable on such inverted rated supply of goods (2)	Adjusted total turnover (3)	Net ITC (4)	Maximum Refund amount to be claimed [(1*4/3)-2] (5)
Values as per claim filed	96,55,673	4,74,552	1,03,29,425	7,01,540	1,81,229
Values as per sanctioned order	96,55,673	4,74,552	1,03,29,425	7,01,540	1,81,229



Values as per GSTR-3B/GSTR-1	1,03,29,425	5,95,654	1,03,29,425	7,01,540	1,05,886
Difference in refund / excess refund					75,343

- iv. The adjudicating authority has not given any finding / reasons regarding sanctioning refund on the basis of lower values of turnover of inverted rated supply of goods and tax payable on such inverted rated supply of goods which resulted in sanctioning of excess refund.
- v. In view of above grounds the *appellant* has requested to set aside the *impugned order* wherein the *adjudicating authority* has erroneously sanctioned refund of Rs.1,81,229/- instead of Rs.1,05,886/-, under Section 54 of CGST Act, 2017 and to pass order directing the original authority to recover the amount erroneously refunded of Rs.75,343/- with interest; and to pass any order as deem fit in the interest of justice.

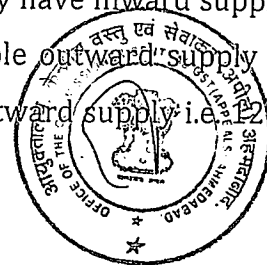
Personal Hearing:

3. Personal Hearing in the matter was held on 02.01.2023. Shri Sourabh Navlakha, Chartered Accountant appeared in person on behalf of the 'Respondent' as authorized representative and submitted some documents. As per their submission they have paid the erroneous refund granted to them amounting to Rs.75,343/- with interest of Rs.7,800/- by DRC-03 bearing ARN No.AD241022009152Z, dated 17.10.2022 and in support of same they submitted the copy of DRC-03 dated 17.10.2022.

Discussion and Findings :

4. I have carefully gone through the facts of the case, grounds of appeal, submission made by the respondent and documents available on record. I find that the present appeal was filed to set aside the impugned order on the ground that the adjudicating authority has sanctioned excess refund to the respondent and to order recovery of the same along with interest. In the present case the respondent has claimed refund on account of ITC accumulated due to Inverted Tax Structure under Section 54 (5) of CGST Act, 2017 read with Rule 89 (5) of CGST Rules, 2017.

5. The dispute is only with regard to amount of refund sanctioned by the Adjudicating authority. I find that the respondent has made the outward supply with payment of tax at the GST rate of 0.1%, 5% and 12% and they have inward supply of inputs at the rate of GST 5%, 12% and 18%. Thus, the whole outward supply falls under inverted rated supply, as the highest rate of GST of outward supply i.e. 12% is



lower than the highest rate of GST on its inward supply i.e. 18%. It was observed that for calculating the inverted rated supply of goods and corresponding tax payable, the respondent and the adjudicating authority has taken only the values of the outward supply cleared at the rate of 0.1% i.e. 1,68,000/- / Rs.168 and 5% i.e. Rs.94.87.673/- / Rs.474384/- . The respondent has not adjusted the values of credit note i.e. Rs.3,38,250/- / Rs.338/- and also not included the values of outward supply cleared @12% credit i.e. Rs.10,12,002/- / Rs.1,21,440/- . This has resulted in excess refund sanctioned of Rs.75,343/-.

6. Further, I find that the Respondent during the course of personal hearing has informed that they have already paid back the refund amount to the appellant department with interest. The Respondent has produced a Xerox copy of letter dated 01.11.2022 informing the original authority that they paid the erroneous refund granted to them amounting to Rs.75,343/- with interest of Rs.7,800/- through DRC-03 bearing ARN No.AD241022009152Z, dated 17.10.2022 by debiting from the Cash Ledger vide Debit Entry No. DC2410220134471, dated 17.10.2022. Therefore, I find that the Respondent has accepted the view of the department.

7. In view of above discussions, I find that the *impugned order* is not legal and proper and therefore, require to be set aside. Accordingly, the appeal filed by the Appellant / Department is allowed and the '*impugned order*' is set aside.

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

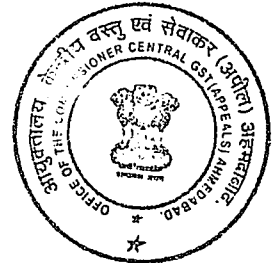
The appeals filed by the *appellant* stands disposed of in above terms.

(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 17.01.2023

Attested

(Ajay Kumar Agarwal)
Superintendent (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

To,
The Assistant Commissioner,
CGST & C.Ex., Division-IV [Changodar],
Ahmedabad -North.

- Appellant

M/s. Acme Diet Care Pvt. Ltd.,
14/A, Panchratna Industrial Estate,
Sarkhej Bavla Road,
Changodar, Ahmedabad ,
PIN - 382213

- Respondent

Copy to :-

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C. Ex., Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Assistant Commissioner, CGST & C. Ex, Division-IV [Changodar], Ahmedabad-North.
5. The Superintendent (System), CGST Appeals, Ahmedabad.
6. P.A. File / Guard File.

