গাবক্তভাতাবলিব Office of the Commiss

Office of the Commissioner केंद्रीय बीएसटी, वर्षीय अनुस्वादाब आपुकालय Central GST, Appeal Ahmedabad Commissionerate बीएसटी प्रवन, राजस्य वार्ग, अन्यादाडीकृतयादादाई ८०० १५. GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015 Phone: 079-26305065 Fax: 079-26305136 E-Mail: commrappl1-cexamd@nic.in



By Regd. Post DIN NO. 20230164SW000000F68D

(年)	फाइन संख्या / File No.	GAPPL/ADC/GSTP/2703/2022 / 7-820 -65				
(8)	अपीस आदेश संख्याऔर दिनांक / Order-In-Appeal No.and Date	AHM-CGST-002-APP-ADC-144/2022-23 and 30.01.2023				
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त (अपीत) Shri Mihir Rayka, Additional Commissioner (Appeals)				
(¥)	जारी करने की दिनांक / Date of issue	31.01.2023				
(⊕)	Arising out of Order-In-Original No. 222406220290186 dated 16.06.2022 passed by The Assistant Commissioner, CGST, Division-IV, Ahmedabad North Commissionerate					
(4)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Mylon Laboratory Ltd. (GSTIN-24ABACM349 IM2Z6), Zydus-Pharma SEZ, Flot No. 20 and 21, Mattoda Village, Matoda, Sanand, Ahmedabad-382213.				
	T	Cartico and it was allowed to the state and are are				
(A)	इस व्यवेश[वर्षीत] से व्यविद कोई व्यक्ति विश्वतिश्वित तरीके में उत्युक्त प्राधिकरारी /प्राधिकरार के शवस वर्षीन सारद कर सकता हैं। Any person aggrieved by, this Order-in-Appeal may file an appeal to the appropriate authority in the following way.					

(9) Issue and Address of the Appellant State Stat	1 1	अपीलकर्ता का नाम और पता /	Zydus-Pharma SEZ,					
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-2-F.No.GAPPI ORDER-IN-APPEAL

Brief Facts of the Case :

M/s, Mylan Laboratories Limited, Pice No.20 and 21, Zydus-Pharma SEZ, Matoda Uliga-Matoda, Janand, Ahmedahad, Gujara-Sa221, Gerelinather referred as the Appellont') has filed the present appeal against the Order No. 2722-06220290186, dated 16.06.2022 (hereinather referred as Timpugned order) rejecting part of refund claim of Re2-996.299; passed by the Assistant Commissioner, COST & C.Ex., Division-IV (Champodra), Ahmedahad-North Commissionerate. (Hereinafter referred to as the Opdisionizing authority).

- 2(1). The 'appellant' is holding GST Registration No. 24AADCM491M226. On 23.04.2022 vide ARN No. AAZ04221282905, the 'appellant' had filled a Refund dain of RsA4700427-for the period April-2021 to September-2021 in response to fixport of GoodyServices without payment of Tax (Accumulated ITC) under GST-RFD-01. In response to said refund claim a Show Cause Notice No. dated 01.06.2022 was issued to them for the following distrepancies: -
 - A. As per RFD-01, adjusted Total Turn Over is shown Rs.1,98,64,46,636/-, whereas the same is found to be Rs.2,12,91,65,769/- as per verification of GSTR-3B.
 - B. Therefore, taking above para into consideration, the refund claim has to be calculated as under:-

	Turnover of zero rated supply	Adjusted total turnover	Net ITC	Refund	
As per RFD-01	1,95,93,17,604	1,98,64,46,636	45,31,935	44,70,042	
After considering figures as discussed at Para A	1,95,93,17,604	2,12,91,65,769	45,31,935	41,70,413	
Refund claim liable for rejection					

C. As per above Para A and Para B, refund claim of Rs.2,99,629/- is liable for rejection.

- 3. Being aggrieved with the impugned orders the appellant has filed the present appeal online on 15.09.2022 and alongwith Form GST APL-01 & certified copy of the order etc. on 22.09.2022 mainly on the following grounds:
 - a) The adjudicating authority erred in rejecting the refund on the ground that—"Instrument fallule 39(1)(8) of COST Relay, 2017 and Para 4 of Cili Circular No.147(13) 2021-GST, dated 12.03.2021, Adjusted Total Turnover is Re.2.12.91.65,7691- which is mentioned in GSTR35 return filed by the claimant, should be considered instead of Rel.1,98.64.66391- aper REPO.2 while claimlating the eligible amount of refund according to Rule 89(4)(8) of COST Rules, 2017 and CBIC circular No.147/03/2021- ST, dashed 12.03.2021."

Accordingly, found that they are eligible for the Adjusted Total Turnover of Rea_123_165_769_- and the Turnover of Zero Rate Supply of Goods amounting to Rea_159_531_760_- and net ITC Res_4.8_31_835_- for the purpose of calculation of refund being claimed. Hence, claimant was found eligible for a refund of Rea_170_413_- and reject the claim of Rea_170_4626_- under Sub-section (9) of Section 5.6.4.7 the strengther is 50-51_613 of Real_82_9.

- b) Appellant submitted that in terms of Bule 99/4(c) of COST Bules, 2017, lower apport turnover Ra.1,95,93,17,694/-, should be considered intained of Ra.2,10,2,0,5,737/- and the same also accepted by the adjudicating authority as eligible export, J zero rated turnover while calculating of refund claim under Rule 39/4(c) of COST Bules, 2017.
- c) For the purpose of Rule 89(4)(c), the value of export / zero rated supply of goods to be included while calculating "Adjusted turnover" will be the same as being determined as per the amended definition of "Turnover of zero-rate supply of goods" in the said rule.
 - d) The adjudicating authority failed to consider the same turnover i.e. zero rated turnover while calculating of "Adjusted Total Turnover".
- e) They submitted illustration provided in the CBIC circular and contended that the adjudicating authority wrongly considered the total turnover as per GSTR-3B which is not correct.

inhtly considered adjusted total turnover and zero rated supply of goods.

A lexport turnover value cannot be considered as per GSTR-3B.

Accordingly, appellant is eligible for refund of Rs.44,70,042/- instead of Rs.41,70.413/-.

In view of the above submission, the appellant has prayed to allow the appeal and consider their request for grant of the refund.

PERSONAL HEARING:-

 Shri Ajit Dhuri, authorized representative, on behalf of the appellant, appeared in virtual mode for personal hearing on 23.12.2022. They have nothing more to add to their earlier submissions.

DISCUSSION AND FINDINGS:-

- 5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and occuments available on record. The appellant was required to fifth the appeal within 3 mounts from the date of communication of the said order as per Section 107 (1) of COST Act, 2017. I find that in the instant case the impugned order was issued on 16-06-2022 and the appeal was filed on 22-09-2022 i.e. after a period of three months hence the appeal was filed on 22-09-2022 i.e. after a period of three months hence the appeal was filed beyond the time limit as prescribed under Section 107 (1) of the Act, i.e. delayed by 7 days. Purther, as per Section 107 (4) of COST Act, 2017, the applialias authority has powers to condone the delay of one month in filing of appeal, over and above the prescribed period of three months. I find that the present appeal is with the condonable period. Therefore, in view of the Section 107 (4) of the COST Act, 2017, I condone the delay of 7 days occurred in filing the appeal.
- I find that the present appeal was filed to set aside the impugned order on the ground that the adjudicating authority has sanctioned refund only of Rs.41,70,413/-instead of eligible refund of Rs.44,70,042/-.
- For better appreciation of facts, I refer to definitions of adjusted total turnover given under Rule 89 (4) of CGST Rules. 2017.
 - "((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 Service (13) of 2017), refund of input tax credit shall be granted as per the following the Company (13) of 2017).

Refund Amount =

(Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC + Adjusted Total Turnover

Where -

(A)

(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 or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which

(D)

refund is claimed under sub-rules (4A) or (4B) or hoth:) (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."

Here, I also refer para 4 of CBIC Circular NO.147/03/2021-GST, dated 12-3-2021. wherein Board has given guidelines for calculation of adjusted total turnover which is as under:

*4. The manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules, 2017.

4.1 Doubts have been raised as to whether the restriction on turnover of zero-rated supply of goods to 1.5 times the value of like goods domestically supplied by the same rly placed, supplier, as declared by the supplier, imposed by amendment in the "Turnover of zero-rated supply of goods" vide Notification No. al Tax dated 23.03.2020, would also apply for computation of "Adjusted Total Turnover" in the formula given under Rule 89 (4) of CGST Rules, 2017 for calculation of admissible refund amount.

4.2 Sub-rule (4) of Rule 89 prescribes the formula for computing the refund of unutilised ITC payable on account of zero-rated supplies made without payment of tax. The formula prescribed under Rule 89 (4) is reproduced below, as under:

"Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC +Adjusted Total Turnover"

4.3 Adjusted Total Turnover has been defined in clause (E) of sub-rule (4) of Rule 89 as under

"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."

4.4 "Turnover in state or turnover in Union territory" as referred to in the definition of "Adjusted Total Turnover" in Rule 89 (4) has been defined under sub-section (112) of Section 2 of CGST Act 2017, as: "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 inter State 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"

4.5 From the examination of the above provisions, it is noticed that "Adjusted Total Turnover" includes "Turnover in a State or Union Territory", as defined in Section 2(112) of CGST Act. As per Section 2(112), "Turnover in a State or Union includes turnover/ value of export/ zero-rated supplies of goods. The "Turnover of zero-rated supply of goods" has been amended

No.15/2020-Central Tax dated 23.03.2020, as detailed above. In view of the above, it can be stated that the same value of zero-retael, export supply of goods, as calculated as per annealed definition of "Turnover of sero-retaed supply of goods," need to see in into consideration while calculating "surnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule 89. Thus, the restriction of \$10% of the value of like goods domestically supplied, as applied in "surnover of sero-ruled supply of goods," would also apply to the value of "Adjusted Total Turnover" in Nulle 99 (4) of the CRI Rules 2017.

4.6 Accordingly, it is clarified that for the purpose of Rule 89(4), the value of export/ zero rated supply of goods to be included while colculating "odjusted total turnover" will be some as being determined as per the amended definition of "Turnover of zerorated supply of goods" in the solid sub-vuls."

9. Infurine find that in the present appeal, the value of zero rated turnover was taken as TOP values as per ablipping bills are mentioned by the appellate in REP-DJ, however, the adjusted turnover is taken as per GSTR-3B returns, which imply that turnover of zero rated supply in adjusted total turnover is taken as timotice value. Apparently, this result in supply in adjusted total turnover is taken as timotice value. Apparently, this result in first properties to the properties values for sense zero rated supply of goods, which lift his factually the properties of the propertie

supply of goods need to be taken in adjusted total turnover also. Therefore, I hold that the impugned order passed by the adjudicating authority rejecting the refund claim of Rs.2,99,629/- is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

अपीतकर्ता द्वारा वर्ज की गई अपील का निपटारा उपरोक्त वरीके से किया जाता है। 10

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

Additional Commissioner (Appeals)

Date: \$ 01.2023 Attested

(Ajar-Kumar Agarwal)

Assistant Commissioner [In-situ] (Appeals) Central Tax, Ahmedabad.



M/s, Mylan Laboratories Limited, Plot No.20 and 21, Zvdus-Pharma SEZ. Matoda Village, Matoda, Sanand, Ahmedabad. Gujarat - 382213

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 [Systems], CGST (Appeals), Ahmedabad.

6 Guard File. 7 PA File

