



सत्यमेव जयते

आयुक्तकायालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in

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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2703/2022 / 7860-65
(ख)	अपील आदेश संख्या और 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 (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	31.01.2023
(ङ)	Arising out of Order-In-Original No. ZZ2406220290186 dated 16.06.2022 passed by The Assistant Commissioner, CGST, Division-IV, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Mylon Laboratory Ltd. (GSTIN-24AADCM3491M226), Zydus-Pharma SEZ, Plot No. 20 and 21, Matoda Village, Matoda, Sarand, Ahmedabad-382213.

(A)	इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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.
(C)	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.
(D)	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.
(E)	उक्त अपील की प्राधिकारी को अपील दाखल करने के संबंध में अधिकृत जानकारी, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलकर्ता विभागीय वेबसाइट www.cbic.gov.in पर प्राप्त कर 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 :**

M/s, Mylan Laboratories Limited, Plot No.20 and 21, Zydus-Pharma SEZ, Matoda Village-Matoda, Sanand, Ahmedabad, Gujarat-382213 (hereinafter referred as the 'Appellant') has filed the present appeal against the Order No. ZZ2406220290186, dated 16.06.2022 (hereinafter referred as 'impugned order') rejecting part of refund claim of Rs.2,99,629/- passed by the Assistant Commissioner, CGST & C.Ex., Division-IV [Changodar], Ahmedabad-North Commissionerate. (Hereinafter referred to as the 'adjudicating authority').

2(i). The 'appellant' is holding GST Registration No. 24AADCM3491M226. On 29.04.2022 vide ARN No. AA2404221282905, the 'appellant' had filed a Refund claim of Rs.44,70,042/- for the period April-2021 to September-2021 in respect of Export of Goods/Services 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 discrepancies: -

- 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				2,99,629

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

2(ii). The *adjudicating authority* has rejected the refund claim of Rs. 2,99,629/- against the impugned order dated 16.06.2022. The *adjudicating authority* found that in terms of Rule 89(4)(E) of CGST Rules, 2017 and the CBIC Circular No.147/03/2012 dated 12.03.2021.



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 -"in terms of Rule 89(4)(E) of CGST Rules, 2017 and Para 4 of CBIC Circular No.147/03/2021-GST, dated 12.03.2021, Adjusted Total Turnover is Rs.2,12,91,65,769/- which is mentioned in GSTR3B return filed by the claimant, should be considered instead of Rs.1,98,64,46,636/- as per RFD-01 while calculating the eligible amount of refund according to Rule 89(4)(E) of CGST Rules, 2017 and CBIC circular No.147/03/2021-GST, dated 12.03.2021."

Accordingly, found that they are eligible for the Adjusted Total Turnover of Rs.2,12,91,65,769/- and the Turnover of Zero Rate Supply of Goods amounting to Rs.1,95,93,17,604/- and net ITC Rs. 45,31,935/- for the purpose of calculation of refund being claimed. Hence, claimant was found eligible for a refund of Rs.41,70,413/- and reject the claim of Rs.2,99,626/- under Sub-section (9) of Section 54 of the Act readwith Sub-rule (3) of Rule 92.

- b) Appellant submitted that in terms of Rule 89(4)(c) of CGST Rules, 2017, lower export turnover Rs.1,95,93,17,604/- should be considered instead of Rs.2,10,20,36,737/- and the same also accepted by the adjudicating authority as eligible export / zero rated turnover while calculating of refund claim under Rule 89(4)(c) of CGST Rules, 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.

- f) They rightly considered adjusted total turnover and zero rated supply of goods. export 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:-

4. 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 documents available on record. The appellant was required to file the appeal within 3 months from the date of communication of the said order as per Section 107 (1) of CGST 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 beyond the time limit as prescribed under Section 107 (1) of the Act, i.e. delayed by 7 days. Further, as per Section 107(4) of CGST Act, 2017, the appellate 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 within the condonable period. Therefore, in view of the Section 107(4) of the CGST Act, 2017, I condone the delay of 7 days occurred in filing the appeal.

6. 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/- .

7. 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 Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula



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

Where, -

(A) _____

(B) _____

(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 refund is claimed under sub-rules (4A) or (4B) or both;

(D) _____

[(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."

8. 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 or, similarly placed, supplier, as declared by the supplier, imposed by amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central 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 Territory" includes turnover/ value of export/ zero-rated supplies of goods. The "Turnover of zero-rated supply of goods" has been amended with



No.16/2020-Central Tax dated 23.03.2020, as detailed above. In view of the above, it can be stated that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", need to be taken into consideration while calculating "turnover 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 150% of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "Adjusted Total Turnover" in Rule 89 (4) of the CGST 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 calculating "adjusted total turnover" will be same as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in the said sub-rule. "

I find that as per definition of adjusted total turnover, defined in clause (E) of sub-rule (4) of Rule 89, the adjusted total turnover includes value of all outward supplies of goods and services made during the relevant period including zero rated (export) supply of goods but exclude value of inward supplies which are liable to reverse charge. Thus, in the formula prescribed under Rule 89 (4) of CGST Rules "the value of zero rated turnover of goods" comes at numerator as well as in "total adjusted turnover" at denominator. As per clarification issued vide CBIC Circular No.147/03/2021, dated 12-3-2021 [Para 4.6], the value taken for turnover of zero rated supply of goods taken at numerator as per clause (C) of Rule 89(4) need to be taken as value of zero rated supply of goods in adjusted total turnover in the formula. In other words, turnover value of zero rated supply of goods at numerator and turnover value of zero rated supply in total adjusted total turnover at denominator should be the same.

9. I further find that in the present appeal, the value of zero rated turnover was taken as FOB value as per shipping bills as mentioned by the appellant in RFD-01, 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 invoice value. Apparently, this result in adopting two different values for same zero rated supply of goods, which I find is factually wrong and not in consonance with statutory provisions. Therefore, I am of the considered view that the same value of zero rated supply of goods taken as turnover of zero rated



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.

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


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


(M. R. Rayka)

Additional Commissioner (Appeals)

Date: 30.01.2023

Attested


(Aja Kumar Agarwal)

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



By R.P.A.D.

To,
M/s, Mylan Laboratories Limited,
Plot No.20 and 21, Zydus-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. P.A. File.

