



अधुक्त का कार्यालय
Office of the Commissioner

केन्द्रीय वीएसटी, अपील अहमदाबाद अधुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आवृत्ति
अनुसूचित

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(क)	प्रदत्त संख्या / File No.	GAPPL/ADC/GSTD/301/2022 / 384-53
(ख)	अपील अदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-152/2022-23 and 31.01.2023
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर अधुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	01.02.2023
(ङ)	Arising out of Order-In-Original No. ZX2401220252347 dated 28.01.2022 issued by The Assistant Commissioner, CGST, Division - II, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	The Assistant Commissioner, CGST & C.Ex., Division - II, Ahmedabad North Commissionerate
	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Performer Multiple (GSTIN-24AAWFP4772G1ZQ) E-1, Samir Shivan Society, B/h Madhusudan Textile, Hirwadi, Saljpur Bogha, Ahmedabad, Gujarat-382345
(A)	इस अदेश(अपील) के अन्तर्गत कोई व्यक्ति निम्नलिखित तरीके में उपर्युक्त 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.	
(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)	यह अपील प्रधिकारी को अपील दायर करने के संबंध में अधिकार, विवरण और संबंधित प्रावधानों के लिए, अपीलकर्ता विचारणीय 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-II [Naroda Road], 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 No.ZX2401220252347, dated 28.01.2022 (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, CGST & C.Ex., Division-II [Naroda Road], Ahmedabad-North (hereinafter referred as '*adjudicating authority*') in the case of M/s Performer Multiple, E-1, Samir Shitvan Society, B/h Madhusudan Textile, Hirawadi, Saljpur Bogha, Ahmedabad, Gujarat-382345 (hereinafter referred as '*Respondent*').

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date
GAPPL/ADC/GSTD/301/2022- APPEAL, dated 27.07.2022	13/2022-23, dated 22.07.2022	ZX2401220252347 dated 28.01.2022

2(i). Brief facts of the case are that the '*Respondent*' is holding GSTN No. 24AAWFP4772G1ZQ had filed refund claim of Rs.4,02,290/- of accumulated ITC due to inverted tax structure vide ARN No.AA240122104694Q, dated 26.01.2022 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 refund claim of Rs.4,02,290/- vide '*the 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 from July,2021 to August,2021 and the 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 adjusted total turnover in the formula as mentioned in Rule 89(5) of CGST Rules, 2017 which resulted in excess refund of Rs.



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

- i. The refund sanction order for Rs.4,02,290/- 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 & required to be set aside.
- ii. On scrutiny of the impugned order in form RFD-06, dated 28.01.2022, it is observed that the adjudicating authority has concurred with values mentioned in the formula for calculation of refund as submitted by the applicant for refund. It is observed from the GSTR-3B that total turnover for the month of July, 2021 and August, 2021 is Rs.9,01,343/- & Rs.35,18,142/- respectively. Therefore, adding the turnover of both months, the adjusted total turnover for the relevant period comes to Rs.44,19,485/-. However, the applicant has wrongly mentioned Rs.21,56,025/- as adjusted total turnover which has resulted in excess refund claim / sanction. Various values as per the claim & as sanctioned by the adjudicating authority / GSTR-3B are shown 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	21,56,025	2,156	21,56,025	4,04,446	4,02,290
Values as per sanctioned order	21,56,025	2,156	21,56,025	4,04,446	4,02,290
Values as per GSTR-3B.	21,56,025	2,156	44,19,485	4,04,446	
Difference in refund / excess refund					



- iii. The adjudicating authority has not given any finding / reasons regarding sanctioning refund on the basis of lower values of adjusted total turnover which resulted in sanctioning of excess refund of Rs.2,07,139/-.
- iv. In view of above grounds the *appellant department* has requested to set aside the *impugned order* wherein the *adjudicating authority* has erroneously sanctioned refund of Rs.4,02,290/- instead of Rs.1,95,151/- resulted into excess refund Rs.2,07,139/- and to pass order directing the original authority to recover the amount erroneously refunded of Rs.2,07,139/- with interest; and to pass any order as deem fit in the interest of justice.

Personal Hearing:

3. Personal Hearings in the matter were granted on 18.10.2022, 15.11.2022 & 24.11.2022. However despite of granting ample opportunities of hearing, in the interest of natural justice, neither respondent nor appellant or any of their authorized representatives appeared to attend the hearing. The respondent or appellant have also not represented for any adjournment in the matter.

I proceed to decide the appeal on merit on the basis of available records, submission in the ground of appeal and the legal position /provisions of law in the matter.

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 as per the GSTR-3B filed by the respondent the total turnover for the month of July,2021 and August,2021 is Rs.9,01,343/- & Rs.35,18,142/- respectively and by adding the turnover of both months, the adjusted



F.No. : GAPPL/ADC/GSTD/301/2022-APPEAL

total turnover for the relevant refund period is Rs.44,19,485/-. I find that the respondent claimant has wrongly mentioned Rs.21,56,025/- as adjusted total turnover which has resulted in excess refund claim / sanction of Rs.2,07,139/- .

6. Further, I find that as per the table show above the respondent / applicant is entitle for refund of Rs.1,95,151/- only under Section 54 of CGST Act, 2017 read with Rule 89 (5) of CGST Rules, 2017. I find that neither the respondent nor any of their authorized representative appeared to attend hearings scheduled by the appellate authority. They have also not filed any defence reply to the appeal filed by the department in support of their claim and have maintained ~~an~~ discreet silent on the issue under appeal.

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 वर्क 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: 31.01.2023

Attested


(Ajay Kumar Agarwal)
Assistant Commissioner (In-situ) (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

To,
The Assistant Commissioner,
CGST & C.Ex., Division-II [Naroda Road],
Ahmedabad -North.

- Appellant

M/s Performer Multiple,
E-1, Samir Shitvan Society,
B/h Madhusudan Textile,
Hirawadi, Saijpur Bogha,
Ahmedabad, Gujarat-382345

- 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-II [Naroda Road], Ahmedabad-North.
5. The Superintendent (System), CGST Appeals, Ahmedabad.
6. Guard File.

