



आयुक्त का कार्यालय
Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in



By Regd. Post

DIN NO. : 20230264SW0000124645

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTD/146/2022 / 8856-61
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-161/2022-23 and 24.02.2023
(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	27.02.2023
(ङ)	Arising out of Order-In-Original No RFD-06 Order No. ZZ2408210158576 dated 11.08.2021 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 – II (Naroda Road). Ahmedabad North Commissionerate
	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Nimbus Overseas (GSTIN-24AAPFN7476A1Z4) G-313, 3rd Floor, City Centre, Idgah Circle, Prem Darwaja Road, Ahmedabad, Gujarat-380016
(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, 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.ZZ240821058576, dated 11.08.2021 (hereinafter referred as '**impugned refund 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 Nimbus Overseas, G-313, 3rd Floor, City centre, Idgah Circle, Prem Darwaja Road, Ahmedabad, Gujarat-380016 (hereinafter referred as '**Respondent**').

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date
GAPPL/ADC/GSTD/146/2022-APPEAL , dated 27.01.2022	21/2021-22, dated 07.01.2022	ZZ240821058576, dated 11.08.2021

2(i). Brief facts of the case are that the '**Respondent**' is holding GSTN No. 24AAPFN7476A1Z4 had filed refund claim of Rs.1,34,216/- of accumulated ITC on account of export of goods/ services without payment of Tax 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** sanctioned the refund claim of Rs.1,02,129/- and rejected an amount of Rs.32,087/- on account of (i) turnover of outward tax supplied – Adjusted total turnover (ii) FOB value being less than Invoice value vide '**the impugned refund 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 account of export of goods/ services without payment of Tax for the period from 01.04.2019 to 31.12.2019 and the adjudicating authority has sanctioned the refund claim of Rs.1,02,129/- and rejected claim of Rs.32,087/- on account of FOB value being less than Invoice. However, on going through the refund claim, it was observed that the adjudicating authority did not examine relevant date for filing of refund applications under Section 54 of the CGST Act, 2017 as well as did not carry out proper verification of the various values in Statement-3A [Rule 89(4) of CGST Rules, 2017] which are part of the formulae to calculate the eligible refund amount. It was noticed that the verification report cited as Supreme Court decision in Misc Application No.665/2021 dated 27.04.2021 for not considering due date for filing of refund claim, appeared incorrect citation.



F.No. : GAPPL/ADC/GSTD/146/2022-APPEAL

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

- i. The refund sanction order in form RFD-06, dated 11.08.2021 sanctioning refund of export of goods / services without payment of Tax (Accumulated ITC) is not legal and proper as the same is not in conformity with Section 54 (4) of the CGST Act, 2017 and also part amount of the excess sanctioned amount is required to be set aside .
- ii. The refund claim for the period from 01.04.2019 to 31.12.2019 was filed by the claimant on 27.07.2021, for the goods exported under six shipping bills, the goods were shipped on various dates tabulated as under :-

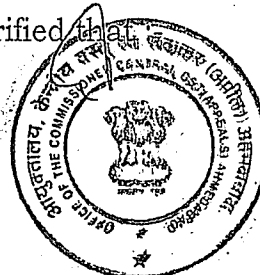
Sr. No.	S / B No.	S/ B date	Date of Shipment as per BL	FOB value in S/B
1.	3327807	07.04.2019	22.04.2019	386668
2.	4714336	07.06.2019	17.06.2019	1013579
3.	5020700	20.06.2019	30.06.2019	1304121
4.	6821333	09.09.2019	15.09.2019	542189
5.	7113830	23.09.2019	02.10.2019	833696
6.	8060576	05.11.2019	13.11.2019	807572

Under Section 54 of the CGST Act, 2017, an application for claiming refund of any tax and interest can be made before the expiry of two years from the relevant date. Relevant date for refund of tax paid on the supplies of goods exported, on the inputs or input services used in such goods is :-

" Where exported by sea or air, the date on which the ship or the aircraft leaves India , on which such goods are loaded on such ship or the aircraft".

Thus it appeared that the claim in respect of goods shipped on consignments in Sr.No. 1 to 3 were not admissible for refund as the goods were shipped prior to two years of filing claim.

The Division office in verification report mentioned the refund for the period April, 2019 to June, 2019 is not barred by limitation as per Supreme Court decision in Misc Application No.665/2021 dated 27.04.2021. However, Para 4(a) of CBIC Circular No.157/13/2021-GST, dated 20.07.2021 which issued clarification regarding extension of limitation under GST law in terms of Supreme Court Order dated 27.04.2021, clarified that



a) Proceedings that need to be initiated or compliances that need to be done by the taxpayers:-These actions would continue to be governed only by the statutory mechanism and time limit provided/ extensions granted under the statute itself. Various Orders of the Hon'ble Supreme Court would not apply to the said proceedings/ compliances on part of the taxpayers.

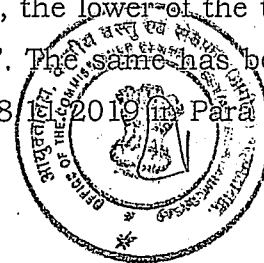
Thus, in view of the above clarification the claimant was required to follow time limit to file claim as per Section 54 of the CGST Act, 2017.

- iii. It is also observed that the claimant have declared Adjusted Total Turnover of Rs.60,00,423/- and net ITC available as Rs.1,34,216/- in Statement under Rule 89(4) of CGST Rules, 2017 for calculation of refund amount. Whereas, it is observed from GSTR-3B returns filed for the claim period that such details are as under :-

Sr. No.	Month	Outward tax supplies (zero rated)- Adjusted total turnover- (in Rs.)	Eligible credit - (in Rs.)
1.	April, 2019	511198	15747
2.	May, 2019	0	0
3.	June, 2019	2851864	29725
4.	July, 2019	0	22636
5.	August, 2019	0	0
6.	September, 2019	1660230	16790
7.	October, 2019	2478200	36984
8.	November, 2019	977130	17592
9.	December, 2019	0	0
Total		8478622	139474

Thus it appeared that there has been mis-declaration in value of Adjusted total turnover in statement and formulae of calculation of admissible refund amount i.e. outward tax supplies (Zero rated) - Adjusted total turnover.

- iv. It was also observed that the claimant have taken value of turnover of zero rated supply of goods and services in formulae as "Invoice value of Goods exported " whereas there was variation of same with FOB value of shipping bills, therefore the same is not correct. It is felt that during processing of refund claim, if there is a difference in the value of the goods declared in the GST invoice and the value in the corresponding shipping bills, the lower of the two should be taken into account for sanction of refund.....". The same has been clarified in CBIC circular No. 125/44/2019-GST, dated 18/11/2019 in Para 47.



F.No. : GAPPL/ADC/GSTD/146/2022-APPEAL

Thus, total FOB value of the shipping bills which were within time limit for filing claim is Rs. 21,83,457/- .

- v. Thus, the admissible refund in view of the discrepancy narrated above in revised statement -3A [Rule 89(4) should have been as under :-

Turnover of Zero rated supply of goods and services (1.)	Adjusted total turnover (2.)	Net Input tax Credit (3.)	Maximum refund amount to be claimed = (1x3)/(2) (4.)
21,83,457	84,78,622	1,34,216	34,564

Thus excess refund of Rs.67,565=00 [Refund sanctioned Rs.1,02,129=00 - Admissible refund Rs.34,564=00] is required to be recovered from the claimant along with interest.

- vi. In view of above grounds the *appellant department* has requested to set aside the *impugned refund order* wherein the *adjudicating authority* has erroneously sanctioned refund of Rs.1,02,129/- instead of Rs. 34,564/- resulted into excess refund Rs. 67,565/- and to pass order directing the original authority to recover the amount erroneously refunded of Rs. 67,565/- with interest; and to pass any order as deem fit in the interest of justice.

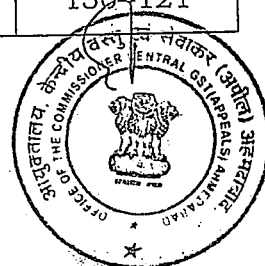
Personal Hearing:

3. Personal Hearing in the matter was held on 18.10.2022. Shri Deepak Sankhala, Chartered Accountant appeared in person on behalf of the 'Respondent' as authorized representative. They have been given 20 (twenty) working days to submit additional information as per their request.

In the additional written submission filed on 16th November, 2022 the appellant submitted as under:-

- i. They agreed that the refund, in respect of following Shipping Bills for the period from April, 2019 to June, 2019, has been filed after expiry of two years of Bill of Lading.

Sr. No.	S / B No.	S/ B date	Date of Shipment as per BL	FOB value in S/B
1.	3327807	07.04.2019	22.04.2019	386668
2.	4714336	07.06.2019	17.06.2019	1013579
3.	5020700	20.06.2019	30.06.2019	1304121



They stated that they don't have any objection in the limitation issue and in exclusion of Turnover of Zero rated Supply of goods while calculating the refund in statement -3A.

- ii. They do not agree for taking Adjusted total turnover Rs.8478622/- as Rs.24,78,200/- is "Nil" rated and exempted turnover in October, 2019 and it is not a part of adjusted total turnover as per GST Act. They re-iterated the definition of adjusted total turnover and also Section 2(47) of CGST Act, 2017 whereby a supply is said to be exempt, when it attracts Nil rate of duty or is specifically exempted by a notification or kept out of the purview of tax.

Accordingly, adjusted total turnover for refund calculation is only Rs.60,00,423/- in statement -3A hence maximum refund amount should be Rs.48,839/-. As per below calculation:-

Turnover of Zero rated supply of goods and services (1.)	Adjusted total turnover (2.)	Net Input tax Credit (3.)	Maximum refund amount to be claimed = (1x3)/(2) (4.)
21,83,457	60,00,423	1,34,216	48,839/-

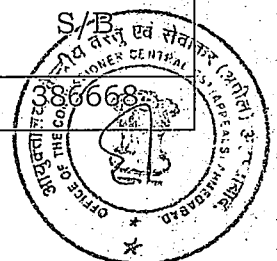
They requested to consider the above points and submitted relevant documents in support of their claim.

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 exports of goods /services -without payment of tax (Accumulated ITC) under Section 54 (4) of CGST Act, 2017 read with Rule 89(4) of CGST Rules, 2017.

5. First of all, I take up the issue regarding time limitation of filing refund claim in respect of following three Shipping Bills as detailed below:

Sr. No.	S / B No.	S/ B date	Date of Shipment as per BL	FOB value in S/B
1.	3327807	07.04.2019	22.04.2019	386668



F.No. : GAPPL/ADC/GSTD/146/2022-APPEAL

2.	4714336	07.06.2019	17.06.2019	1013579
3.	5020700	20.06.2019	30.06.2019	1304121

5.1 Further, I find that on the subject matter recently Notification No. 13/2022-Central Tax dated 05.07.2022 has been issued by the CBIC. The relevant para is reproduced as under :

(iii) *excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.*

2. *This notification shall be deemed to have come into force with effect from the 1st day of March, 2020.*

5.2 In view of foregoing facts, I find that in respect of refund claim for which due date for filing refund claim falls during period from 01.03.2020 to 28.02.2022, two years time limit under Section 54 of the CGST Act, 2017 is to be reckoned, excluding said period. In the subject case, the claim was filed for the aforesaid three shipping bills viz., (i) 3327807 dated 7.4.2019 (Date of shipment : 22.04.2019) (ii) 4714336 dated 07.06.2019 (Date of shipment 17.06.2019) and (iii) 5020700 dated 20.06.2019 (Date of shipment 30.06.2019) on 27.07.2021 considering the due date prescribed under Section 54 the claim period for which the due date falls during 01.03.2020 to 28.02.2022 is not hit by time limitation under Section 54 of the CGST Act, 2017.

5.5 I find that in the present matter the refund claim for aforesaid three shipping bills was filed on 27.07.2021, accordingly, following the order of the Hon'ble Supreme Court in MA 665/2021 in SMW(C) No. 3/2020 as well as in the light of Notification No. 13/2022-Central Tax dated 05.07.2022, I hold that the rejection of refund claim(s) for shipping bills viz (i) 3327807 dated 7.4.2019 (Date of shipment : 22.04.2019) (ii) 4714336 dated 07.06.2019 (Date of shipment 17.06.2019) and (iii) 5020700 dated 20.06.2019 (Date of shipment 30.06.2019) respectively on the ground of time limitation is not legal and proper. Hence, the appeal(s) filed by the appellant succeeds on time limitation ground. Needless to say, since the claim was rejected on the ground of time limitation, the admissibility of refund on merit is not examined in this proceeding. Therefore, any claim of refund filed in consequence to this Order may be examined by the appropriate authority for its admissibility on merit in accordance with Section 54 of the CGST Act, 2017 and Rules made thereunder as well as in the light of order of the Hon'ble Supreme Court dated 10.01.2022 and CBIC's Notification No. 13/2022-Central Tax dated 05.07.2022.



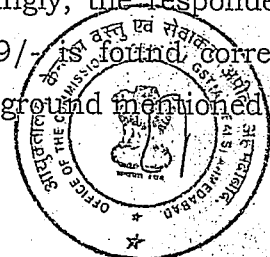
6. Now, I take up the issue regarding declaration of Adjusted Total Turnover of Rs. 60,00,423/- and net input tax credit available as Rs. 1,34,216/- in their statement under Rule 89(4) of the Central Goods and Services Tax (CGST) Rules, 2017 for calculation of refund amount. For this, I find that the respondent contended that as per Section 2(112) of CGST Act, 2017 the turnover in a state or union territory, excluding the turnover of services; and the turnover of zero rated supply of services 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. Further they contended that as per section 2(47) of the CGST Act, a supply is said to be exempt, when it attracts NIL rate of duty or is specifically exempted by a notification or kept out of the purview of tax (i.e non-GST supply).

6.1 They submitted copy of GSTR-1 return for the month of October 2019 wherein NIL rated supplies against Intra-state supplies to registered persons shown as Rs. 11,28,141/- and NIL rated supplies against Inter-state supplies to registered person shown as Rs. 13,47,060/- (Total Rs. 24,75,201/-) which they also declared in their GSTR-3B return submitted for the month of Oct-2019 as Rs. 24,75,200.85 against sub clause (c) "Other outward supplies (nil rated, exempted) of Column 3.1 "Details of Outward supplies and inward supplies liable to reverse charge".

For this, I refer to the Section 2(112) of the CGST Act, 2017, wherein it is defined that '2(112) "turn over 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 or 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;"

I, further, refer to the section 2(47) of the CGST Act, 2017 wherein it is defined that '2(47) "exempted supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under Section 11, or under Section 6 of the Integrated Goods and Services Tax Act, and includes non taxable supply;'

6.2 From the above, I find that the respondent has correctly shown and declared value of Adjusted Total Turnover as Rs. 60,00,423/-. Accordingly, the respondent claim for maximum refund amount worked out to Rs. 48,839/- is found correct. Hence, I find that the present appeal is not maintainable on the ground mentioned by the appellant.



F.No.: GAPPL/ADC/GSTD/146/2022-APPEAL

7. Further, I find that as per para 4 of the grounds of appeal, the appellant has stated that during the processing of the refund claim, if there is difference in value of the goods declared in GST invoice and the value in the corresponding shipping bill / bill of exports, the lower of the two values should be taken into account for sanction of refund". For this, I find it from the remarks made "*i.e Refund is admissible as per FOB as inv. Val is inclusive of freight & insurance for transit of goods after leaving shore of India, hence same cannot be included in transaction value....*" vide Refund Sanction Order dated 11.08.2021 that the Refund Sanctioning Authority has already taken FOB value (i.e lower values) of the shipping bills not "invoice value of the goods exported" hence I do not find any merit in the contention of the appellant that the respondent has taken "invoice value of goods exported". From this, I find that the present appeal is not maintainable on this count. From above discussions, I therefore, find that the present appeal is not maintainable on all the counts as discussed hereinabove.

8. In view of above discussions, I find that the *impugned refund order* passed by the refund sanctioning authority /adjudicating authority is legal and proper and in conformity with Section 54(4) of CGST Act, 2017 read with Rule 89(4) of the CGST Rules, 2017. Accordingly, the appeal filed by the *Appellant / Department* is rejected and I uphold the '*impugned refund order*' is proper and legal.

9. 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.

Attested

(TEJAS J MISTRY)
Superintendent (Appeals)
Central Tax, Ahmedabad.

By R.P.A.D.

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

M/s Nimbus Overseas,
G-313, 3rd Floor, City centre,
Idgah Circle, Prem Darwaja Road,
Ahmedabad, Gujarat-380016

(Minir Rayka)
Additional Commissioner (Appeals)

Date: 02.02.2023



- Appellant

- Respondent

[GSTIN : 24AAPFN7476A1Z4]

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 Commissionerate.
4. The Assistant / Deputy Commissioner, CGST & C.Ex., Division-II [Naroda Road], Ahmedabad-North Commissionerate.
5. The Superintendent (System), CGST Appeals, Ahmedabad.
- ✓ 6. Guard File.
7. P A File.

