

 <p>सत्यमेव जयते</p>	<p>आयुक्त का कार्यालय Office of the Commissioner केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय Central GST, Appeal 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</p>	 <p>आज़ादी का अमृत महोत्सव</p>
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DIN NO. : 20220564SW000000B4B3

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTD/39/2021-APPEAL / 1059 70 1094
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-029/2022-23 & 31.05.2022
(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	31.05.2022
(ङ)	Arising out of RFD-06 Order No. ZR2411200183156 dated 13.11.2020 issued by the Assistant Commissioner, CGST & C.Ex., Division – II (Naroda Road), 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 Address :- 3rd Floor, Sahajanand Arcade, 132 Ft. Road, Helmet Circle, Memnagar, Ahmedabad-380009
	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Vijay Industries (Legal Name – Vitthalbhai Kalyanbhai Patel) (GSTIN – 24AOOPP2611L1ZR) Address:- 1, Mahashakti Estate, Part 2, RJ Kinariwala, L.B. Shastri Road, Bapunagar, Ahmedabad – 380024

(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 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 - II, Ahmedabad North Commissionerate (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 the RFD-06 Order No. ZR2411200183156 (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, CGST & C. Ex., Division - II, Ahmedabad North (hereinafter referred as '*adjudicating authority*') in the case of **M/s. Vijay Industries** (Prop. Sh. Vitthalbhai Kalyanbhai Patel), 1, Mahashakti Estate, Part - 2, RJ Kinariwala L. B. Shastri Road, Bapunagar, Ahmedabad - 380024 (hereinafter referred as '**Respondent**').

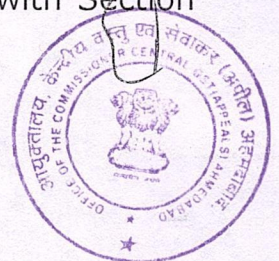
Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date
GAPPL/ADC/GSTD/39/2021- APPEAL Dated 11.05.2021	06/2021-22 Dated 05.05.2021	ZR2411200183156 Dated 13.11.2020

2(i). Briefly stated the facts of the case are that the '*Respondent*' holding GST Registration - GSTIN 24AOOPP2611L1ZR had filed a refund claim of Rs.5,80,753/- of CGST and SGST for the period from 01.10.2018 to 31.03.2019 under Section 54 of the CGST Act, 2017. The claim was filed on account of ITC Accumulated due to Inverted Tax Structure. Claimant has used formula for calculation of refund in Statement - 3A [rule 89(4)], and made claim of refund for Rs.5,80,753/- in RFD-01 filed on 17.10.2020. The *adjudicating authority* has sanctioned the total refund claim of Rs.5,80,753/- vide *impugned order* dated 13.11.2020. During post audit the *department* has observed that

"By considering the Adjusted turnover as 3B return value i.e. Rs.10017065/- refund of Rs.25208/- paid in excess i.e. refund admissible is Rs.555545/ [(9567860x1082481/10017065)-478393]"

Based on documents uploaded by claimant it revealed that excess refund of Rs.25,208/- has been sanctioned to the claimant.

2(ii). The '*Department*' has accordingly, submitted that the refund sanctioned vide RFD-06 Order No. ZR2411200183156 dated 13.11.2020 is not legal and proper as it is not in conformity with Section



54 (3) of the CGST Act, 2017 and rules therein. Therefore, it requires/liable to be set aside to the extent of excess amount refunded.

The Department in the grounds of appeal further submitted that "Adjusted Total turnover" means the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding – (a) the value of exempt supplies other than zero rated supplies and (b) the turnover of supplies in respect of which refund is claimed under rule 89(4A) or 89(4B) or both, if any during the relevant period; Rule 89(2) (h) of the CGST Rules, 2017 stipulate that refund claim on account of accumulated ITC (where such accumulation is on account of inverted duty structure) has to be accompanied by a statement containing the number and date of invoices received and issued during a tax period. From GSTR-3B statement uploaded by the claimant, it is observed that the claimant during the claim period from 01.10.2018 to 31.03.2019 have declared Outward taxable supplies (other than zero rated, nil rated and exempted) as below:

Name of Month	(a)Outward taxable supplies (other than zero rated, nil rated and exempted)
October'18	2761355
November'18	1329000
December'18	1464223
January'19	1398235
February'19	1811652
March'19	1252600
Total	10017065

2(iii). The claimant have failed to declare correct value in column (3) in Statement – 3A [rule 89(5)] as Rs.1,00,17,065/-. The Department has further submitted that the admissible refund in revised statement – 3A [rule 89(5)] should have been as under :

Turnover of inverted rated supply of goods and services (1)	Tax payable on such inverted rated supply of goods and services (2)	Adjusted total turnover (3)	Net input tax credit (4)	Maximum refund amount to be claimed [(1x4/3)-2] (5)
95,67,860/-	4,78,393/-	1,00,17,065/-	10,82,482/-	5,55,545/-



Thus excess refund 580753 - 555545 = Rs.25,208/- is sanctioned which is required to be recovered from the claimant. Accordingly, the Department has submitted that while passing the impugned order the adjudicating authority failed to ascertain and verify correct values of Adjusted total turnover as per documents uploaded by claimant in Statement 3A, which resulted into excess payment of refund of Rs.25,208/- as per formula prescribed in Rule 89 of the CGST Rules, 2017.

2(iv). Considering the above facts the *Department* has submitted that the *impugned order* is not proper and legal and accordingly, makes prayer for relief as under :

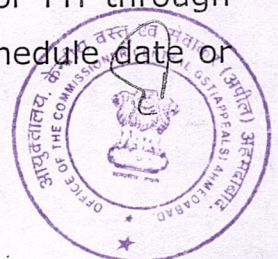
- To set aside the *impugned order* to the extent of excess amount refunded of Rs.25,208/-.
- To pass an order directing to the original authority to recover the amount erroneously refunded to the claimant with interest
- To pass any other order(s) as deemed fit in the interest of justice.

Personal Hearing :

3. The Personal Hearings were offered to the *Respondent* in the present matter by the appellate authority. The matter was posted for Personal Hearing through virtual mode on 28.04.2022, 12.05.2022 and on 19.05.2022. For informing the said date of PH necessary communication was made to the *Respondent* vide following letters by the appellate authority :

- (i) GAPPL/ADC/GSTD/39/2021-APPEAL/386 - 387 dated 19.04.22
- (ii) GAPPL/ADC/GSTD/39/2021-APPEAL/761 dated 05.05.22
- (iii) GAPPL/ADC/GSTD/39/2021-APPEAL/870 dated 12.05.22.

Through aforesaid letters the date of PH were informed and also specifically asked to the *Respondent* that “if they wish to be heard in person then necessary information Viz. the name, valid e-mail id and Vakalatnama of the authorized representative who would be attending the virtual hearing, may be provided well in advance.” However, no response has been received by the appellate authority from *Respondent* in this regard. Thereafter, a letter under F. No. GAPPL/ADC/GSTD/39/2021-APPEAL/987 dated 24.05.2022 was issued to the *Respondent*. It was communicated to the *Respondent* that matter is posted for PH through Virtual Mode on 27.05.2022 and if you fail to appear on schedule date or



भारत सरकार
O.I.G.S.



आयुक्त (प्रमाणित)
COMMISSIONERATE (APICAL)
केन्द्रीय वस्तु एवं सेवाकर/CENTRAL
गोदारी भंडार, सी.डी.एच.डी. भवन,
5TH FLOOR, CENTRAL GST BHAN,
वॉशिंग्टन रोड, नई दिल्ली
OPP. POLYTECHNIC, ANANDPURI,
नई दिल्ली-110028

P. No. GATPE/ADC/GSTID/397/2021-APPEAL/352
 DTS-20210564SW000000BB2F
 To,
 M/s Vinay Industries (Legal Name - Vinthalbhai Kalya
 GSTIN - 24AOOPP2611L1ZR)
 Address- 1, Maheshaku Estate, Part 2, RJ Kinariwari
 LB, Shastri Road, Bapanagar, Ahmedabad - 380024
 Gentleman,

Quick help ?

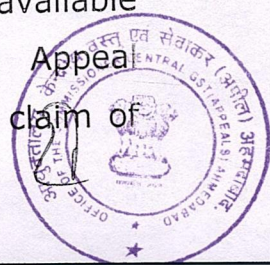
²⁸ Consignment Number

EG145999046IN

Track More

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Confirmed On
BNPL AHMEDABAD	25/05/2022 09:14:28	382345	17.70	Inland Speed Post	I E Bapunagar SO	27/05/2022 16:35:27
Event Details For : EG145999046IN			Current Status : Item Delivery Confirmed			
Date	Time	Office	Event			
27/05/2022	16:35:27	Saipur Bogha SO	Item Delivery Confirmed			
27/05/2022	09:57:00	Saipur Bogha SO (Beat Number:20)	Item Delivered [To: GHHHH (Addressee)]			
27/05/2022	09:00:27	Saipur Bogha SO	Out for Delivery			
27/05/2022	08:13:38	Saipur Bogha SO	Item Received			
27/05/2022	05:43:33	Ahmedabad NSH	Item Dispatched			
27/05/2022	05:08:28	Ahmedabad NSH	Item Bagged			
26/05/2022	18:35:08	Ahmedabad NSH	Item Received			
26/05/2022	14:05:08	I E Bapunagar SO	Item Dispatched			
26/05/2022	13:28:29	I E Bapunagar SO	Item Bagged			
26/05/2022	11:10:55	I E Bapunagar SO	Item Redirected to Saipur Bogha SO INSUFFICIENT ADDRESS			
26/05/2022	08:50:53	I E Bapunagar SO	Item Received			
25/05/2022	22:48:49	BNPL AHMEDABAD	Item Dispatched			
25/05/2022	18:55:26	BNPL AHMEDABAD	Item Bagged			
25/05/2022	09:14:28	BNPL AHMEDABAD	Item Booked			

4. I have carefully gone through the facts of the case available on records, submissions made by the 'Department' in the Appeal Memorandum. I find that the 'Respondent' has preferred refund claim of



Rs.5,80,753/- of CGST and SGST for the period from 01.10.2018 to 31.03.2019 under Section 54 of the CGST Act, 2017. The claim was filed on account of ITC Accumulated due to Inverted Tax Structure.

5. Further, I find that as regards to aforesaid *impugned order*, the *department* has observed that the Respondent failed to declare correct value in respect of Adjusted total turnover as Rs.1,00,17,065/- which resulted into sanction of excess amount of Refund of Rs.25,208/-. The *adjudicating authority* failed to ascertain and verify correct values of Adjusted total turnover as per documents uploaded by claimant in Statement - 3A, which resulted into excess payment of refund of Rs.25,208/- as per formula prescribed under Rule 89 of the CGST Rules, 2017. Accordingly, the *department* has preferred the present appeal against said *impugned order*.

6. Further, before deciding the present departmental appeal four different letters were issued by the office of the appellate authority to the Respondent. Through said letters the Respondent has been given Personal Hearing opportunities. However, the Respondent is not responding to the said letters of PH. The proof of delivery of letter dated 24.05.2022 is produced at para 3 above. Therefore, this appellate authority has no other option, except to decide the matter ex-parte.

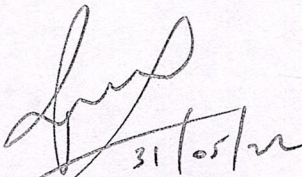
7. On going through the submissions of the *department* I find that the *adjudicating authority* has sanctioned the excess amount of refund to the Respondent in the present matter. As considering the Adjusted total turnover as Rs.1,00,17,065/-, Inverted rated supply turnover Rs.95,67,860/-, Tax payable on such inverted rated supply Rs.4,78,393/- and Net ITC Rs.10,82,482/- the admissible amount of Refund comes to Rs. 5,55,545/- in terms of the formula prescribed in Rule 89 of the CGST Rules, 2017. Whereas, refund sanctioned vide *impugned order* for Rs.5,80,753/-. Therefore, I find that the *adjudicating authority* has sanctioned the excess amount of Refund of Rs.25,208/- (580753-555545) to the Respondent.



8. In view of above discussions, I find that the *impugned order* is not legal and proper and therefore, require to be set aside to the extent of sanction of excess amount of refund of Rs.25,208/-. Accordingly, the appeal filed by the 'Department' is allowed and set aside the 'impugned order' to the extent of sanction of excess amount of Refund of Rs.25,208/-

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

The appeal filed by the 'Department' stand disposed off in above terms.

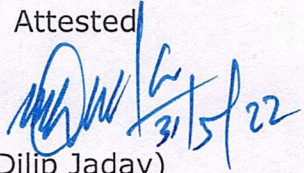

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 31.05.2022



Attested


(Dilip Jadav)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
The Assistant Commissioner,
CGST & C. Ex., Division – II,
Ahmedabad North.

Appellant

M/s. Vijay Industries,
(Prop. Sh. Vitthalbhai Kalyanbhai Patel),
1, Mahashakti Estate, Part – 2,
RJ Kinariwala L. B. Shastri Road,
Bapunagar, Ahmedabad - 380024

Respondent

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-II, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File

