 सत्यमेव जयते	<p style="text-align: center;">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>	 आज़ादी का अमृत महोत्सव
--	--	--

By Regd. Post

DIN NO. : 20220664SW0000222F7A

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTD/67-68/2021-APPEAL / 1756 To 1761
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-037 to 038/2022-23 & 16.06.2022
(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	17.06.2022
(ङ)	Arising out of RFD-06 Orders, (i) Order No. ZY2407200067818 dated 06.07.2020, (ii) Order No. ZP2407200341329 dated 23.07.2020, issued by the Assistant Commissioner, CGST & C.Ex., Division – V (Dholka), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	The Assistant/Deputy Commissioner, CGST & C.Ex., Division-V (Dholka) Ahmedabad North Commissionerate Address :- 2 nd Floor, Sahajanand Arcade, 132 Ft. Road, Helmet Circle, Memnagar, Ahmedabad-380009
	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Astra Life Care (India) Pvt. Ltd. (GSTIN – 24AAECA6553D1Z0) Address:- 57/P, Sarkhej-Bavla Highway, Rajoda, Ahmedabad – 382220; E-mail id – mukesh@astralifecare.com

(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 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 appeals have been filed by the Assistant Commissioner, CGST & C. Ex., Division - V, Ahmedabad North Commissionerate (hereinafter referred as '*appellant*' / '*department*') in terms of Review Orders issued under Section 107(2) of the CGST Act, 2017 (hereinafter referred as '*the Act*') by the Reviewing Authority against the RFD-06 Orders (hereinafter referred as '*impugned orders*') passed by the Assistant Commissioner, CGST & C. Ex., Division - V, Ahmedabad North (hereinafter referred as '*adjudicating authority*') in the cases of **M/s. Astra Lifecare India Pvt. Limited**, 57/P, Sarkhej-Bavla Highway, Rajoda, Ahmedabad - 382220 (hereinafter referred as '*Respondent*').

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date (<i>'impugned orders'</i>)
GAPPL/ADC/GSTD/67/2021- APPEAL Dated 18.06.2021	10/2021-22 Dated 25.05.2021	ZY2407200067818 Dated 06.07.2020
GAPPL/ADC/GSTD/68/2021- APPEAL Dated 18.06.2021	09/2021-22 Dated 25.05.2021	ZP2407200341329 Dated 23.07.2020

2(i). Brief facts of the case are that the '*Respondent*' having GST Registration - GSTIN 24AARCA6553D1Z0 had filed following refund applications :

Sr. No.	Period	Amount of Refund claim of CGST & SGST
1	01.12.19 to 31.12.19	Rs.22,08,869/-
2	01.01.20 to 31.01.20	Rs.59,53,086/-

The refund claims were filed under Section 54 of the CGST Act, 2017 on account of Exports of Goods / Services - without payment of Tax (Accumulated ITC). The adjudicating authority has sanctioned the refund claims for Rs.22,08,869/- and Rs.59,51,633/- vide '*impugned orders*'. The said refund orders were subjected to Post Audit wherein it was observed that -

"As per para 9 and 9.1 of Circular Number 37/11/2018-GST dated 15.03.2018, it has been clarified that during the processing of the refund claim, the value of the goods declared in the GST invoice and the value in



the corresponding shipping bill/ bill of exports should be examined and the lower of the two values should be sanctioned as refund ...” The calculation of eligible refund in respect of applications are worked out and tabulated as under :

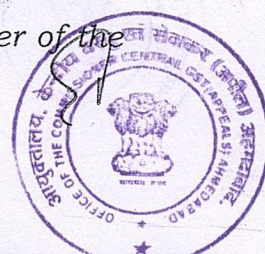
Turnover of zero rated supply of goods (1)	Net Input Tax Credit (2)	Adjusted total turnover (3)	Refund amount admissible 1x2/3	Refund sanctioned	Excess amount refunded
27914669	2207278	30819857	1999212	2208869	209657
16673011	5953086	17958406	5526987	5951633	424646

2(ii). In the grounds of appeal the ‘Department’ has submitted that the impugned orders are not legal and proper as these are not in conformity with Section 54(5) of the CGST Act, 2017 and rules therein and requires / liable to be set aside to the extent of excess amount refunded. The ‘Department’ has referred the para 9 & 9.1 of the CBIC’s Circular No. 37/11/2018-GST dated 15.03.2018, the said para are reproduced as under :

9. Discrepancy between values of GST invoice and shipping bill/bill of export:

It has been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill / bill of export.

9.1 During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be sanctioned as refund.



The value of the goods declared in GST Invoice and the value in the corresponding Shipping Bill / Bill of Exports in the present matters are as under :

Period	Shipping Bill No.	Shipping Bill Date	Invoice Value	FOB Value	Value considered (lower of (4) & (5))
(1)	(2)	(3)	(4)	(5)	(6)
December'2019	8697229	03.12.19	6036756	6036116	6036116
	8724079	04.12.19	3765650	3728704	3728704
	9280886	28.12.19	7411615	7403462	7403462
	9322397	30.12.19	10758140	10746387	10746387
			2,79,72,161		2,79,14,669
January'2020	9535095	09.01.20	1799103	1797694	1797694
	9626353	09.01.20	619960	619218	619218
	9770786	20.01.20	2911067	2907865	2907865
	9770810	20.01.20	1532241	1530555	1530555
	1005218	29.01.20	5103832	5098218	5098218
	1002953	29.01.20	1091220	992090	992090
	1068284	31.01.20	3831585	3727371	3727371
			1,68,89,008		1,66,73,011

In view of above, the Department in the grounds of appeal submitted that the claimant has failed to declare correct value in column (1) in statement-3A [Rule 89(4)] i.e. lower value as mentioned in above table. The Department has also observed in respect of refund pertains to January'20 that apart from zero rated outward supplies for Rs.1,68,89,008/- the claimant have declared other outward supplies for Rs.10,69,398/- in GSTR-3B return for January'20. Thus actual adjusted turnover is Rs.1,79,58,406/-

2(iii). Further, as per the grounds of appeal the claimant has also not mentioned correct Net ITC in column (3) in statement - 3A [rule 89(4)]. The department has accordingly calculated the admissible amount of refund in revised statement 3A [rule 89(4)] as under :

Period	Turnover of zero rated supply of goods and services	Adjusted total turnover	Net Input Tax Credit, Edit the Net ITC to exclude, the ITC availed on Capital Goods and the ITC of refund claimed under	Maximum refund amount to be claimed [(1x3)/2]
	(1)	(2)	(3)	(4)
01.12.19 to 31.12.19	2,79,14,669	3,08,19,857	22,07,278	19,99,212
01.01.20 to 31.01.20	1,66,73,011	1,79,58,406	59,53,086	55,26,987



In view of aforesaid refund claims, the department has observed that the value of export as per GST Invoices declared is differed from which its corresponding value for export as per shipping bill. Accordingly, the *department* has stated that lower value should be taken for the computation of refund as per Circular No. 37/11/2018 - GST dated 15.03.2018.

2(iv). In view of above, the '*Department*' has submitted that while passing the aforesaid impugned orders, the adjudicating authority, failed to ascertain correct values of Turnover of zero rated supply of goods and actual adjusted turnover as well as Net ITC in statement - 3A [rule 89(4)], which resulted into excess payment of refund of Rs.2,09,657/- & Rs.4,24,646/- as per formula prescribed under Rule 89(4) of the CGST Rules, 2017. Considering the said facts the department has stated that the impugned orders passed by the adjudicating authority are not proper and legal and therefore prayed for relief as under :

- To set aside the impugned orders to the extent of excess amount of refund so sanctioned.
- To pass 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. Personal Hearings in the matter through virtual mode were offered to the "*Respondent*" on 19.05.2022, 27.05.2022 and on 09.06.2022. However, no one appeared for the PH through Virtual Mode on the Scheduled dates.

Discussion and Findings :

4(i). 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 correspondence/letters issued for PH scheduled on 19.05.22 & 27.05.22 received back undelivered from the postal authorities. Accordingly, the letter dated 02.06.22 for third PH scheduled on 09.06.2022 forwarded to the jurisdictional Dy. Commr./Asstt. Commr., CGST, Division - V (Dholka) with a request to deliver the correspondence to the Respondent.



Thereafter, the Respondent through email mukesh@astralifecare.com dated 08.06.2022 informed as under:

"We are received letter No. F. No. GAPPL/ADC/GSTD/67-68/2021 Date : 02.06.2022. This is inform you that we our plant shut down due to Financial problems and currently our power is disconnect, at present not possible to provide any clarification due to our plant last 2 year is closed."

In view of above, the Respondent has informed that at present they are not able to provide any clarification as since last 2 years they have shut down their plant due to financial problems and currently there is no power connection also. It is pertinent to mention here that the department has filed the present appeals against the impugned orders on 18.06.2021 however, till date no cross objection/submissions received from the Respondent. Further, I find that the Respondent has been given the sufficient number of Personal Hearing, before deciding the matter by this appellate authority however, no one appear for PH through Virtual Mode and instead of informed that at present they are not able to provide any clarification. Therefore, there is no other option to decide the matter except decide the same as ex-parte.

4(ii). I find that the *Respondent* has preferred refund claims of the ITC accumulated on account of Export of Goods / Services without payment of Tax and the *adjudicating authority* has sanctioned the said refund claims vide *impugned orders*. However, during the course of post audit of refund claims so sanctioned by the adjudicating authority, the department has observed that the Respondent has not declared the correct value in terms of CBIC Circular No. 37/11/2018 - GST dated 15.03.2018. I find that while passing of such refund claims the refund sanctioning authority has to examine the value declared by claimant and lower value among value declared in GST Invoice and value declared in corresponding Shipping Bills / Bill of Export is to be considered. Thereafter, admissible amount of refund is to be worked out in terms of formula as prescribed in Rule 89(4) of the CGST Rules, 2017. Further, I find that it is also pointed out that the Respondent has mis-declared the Net ITC as well as adjusted turnover

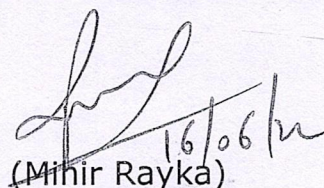


4(iii). In view of above facts, I find that the adjudicating authority has not examined the value properly for zero rated supply turnover, actual adjusted turnover as well as amount of Net ITC. Accordingly, I find that the Adjudicating Authority has sanctioned the excess amount of refund to the '*Respondent*' and thus the Refund Orders issued in Form RFD-06 which are being challenged in the present appeals are found to be not proper and legal.

5. In view of above discussions, I find that the impugned orders are not legal and proper and therefore, require to be set aside. Accordingly, the appeals filed by the '*Department*' are allowed and set aside the '*impugned orders*' to the extent of excess amount of refund so sanctioned.

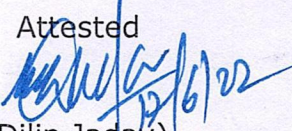
6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 16.06.2022

Attested

(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

To,
The Assistant / Deputy Commissioner,
CGST & C. Ex., Division - V,
Ahmedabad North.

M/s. Astra Lifecare India Pvt. Limited,
57/P, Sarkhej-Bavla Highway, Rajoda,
Ahmedabad - 382220

Appellant

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-V, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File