



सत्यमेव जयते

आयुक्तकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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By Regd. Post

DIN NO. 20230764SW0000116991

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/ 908-909,1183/2023 /3&89-35
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC/26 to 28/2023-24 and 24.07.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	25.07.2023
(ङ)	Arising out of below mentioned OIO's passed by The Assistant Commissioner, CGST, Division-IV, Ahmedabad North Commissionerate	
	Sr. No.	F. No.
	1	GAPPL/ADC/GSTP/908/2023
	2	GAPPL/ADC/GSTP/909/2023
		Order No.
		ZH2411220270136
		ZK2411220234603
		ZM2412220371982
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Otsuka Pharmaceuticals India Pvt. Ltd. (GSTIN-24AAFCC0602G1ZD) 199,200,201,206 TO 210, Village Vasna Chacharwadi, Taluka - Sanand, Ahmedabad, Gujarat-382213.

(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 संबंधिते अधिक, 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:**

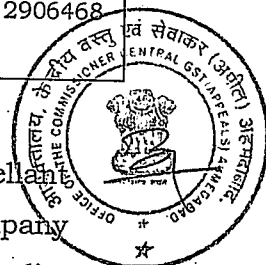
M/s. Otsuka Pharmaceuticals India Pvt Ltd., [GSTIN : 24AAFCC0602G1ZD], 199-201, 206 to 210, Village Vasna Chacharwadi, Taluka - Sanand, Ahmedabad, Gujarat - 382213 (herein after referred to as the "appellant") have filed the following appeals against the refund sanction/rejection orders (herein after referred to as the "impugned order(s)") as mentioned below passed by the Assistant Commissioner, CGST, Division - IV, Ahmedabad North Commissionerate (herein after referred to as the "adjudicating authority") for amount shown against respective ARN Nos. (hereinafter referred to as the "respondent") on account of "Export of goods / Service without payment of tax (accumulated ITC) under Letter of Undertaking (LUT)". The details are as under:

TABLE -A:

Sr. No	Appeal File Number	Date of filing of appeal	Refund sanctioned Order (Impugned Order-RFD-06) No. & Date / Refund Application ARN No. & Date	Refund claimed for the month /period	Refund claimed (In Rs.)	Amount of Refund sanctioned (In Rs.)	Amount of refund rejected (in Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	GAPPL/ADC/GSTP/ 908 /2023	23.02.2023	ZH2411220270136 / 24.11.2022 (ARN NO. AA2409220904719 / 27.09.2022)	01.04.2021 to 30.06.2021	17141670	16698814	442856
2	GAPPL/ADC/GSTP/ 909/2023	21.02.2023	ZK2411220234603 / 22.11.2022 (ARN NO. AA240922090547Y / 27.09.2022)	01.07.2021 TO 30.09.2021	20156512	19478800	677712
3	GAPPL/ADC/GSTP/1183/2023	27.03.2023	ZM2412220371982 / 28.12.2022 (ARN NO. AA241222004177U /02.12.2022)	01.10.2021 TO 31.03.2022	67536256	64629788	2906468

2. Brief facts of the case in all these 03 (three) appeals is that the appellant registered under GSTIN - 24AAFCC0602G1ZD being a pharmaceutical company dealing into various pharmaceutical products which are sold within and outside India. The export of goods is done without payment of tax under the Letter of Undertaking ("LUT"). Since the appellant had made export of goods without payment of IGST, and had filed refund of Input Tax Credit accumulated for amount of Rs.1,71,41,670/-, Rs.2,01,56,512/- & Rs.6,75,36,256/- respectively (as per Table-A above) and for the period 01.04.2021 to 30.06.2021, 01.07.2021 to 30.09.2021 and 01.10.2021 to 31.03.2022 respectively (as per Table-A) under Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

Subsequently, the Assistant Commissioner, CGST, Division - IV, Ahmedabad North Commissionerate, has sanctioned refund amount partially as shown against Col no.7 and rejected partial amounts as shown against Col No.8 in the Table-A above for the respective months on the following grounds that:



1. ORDER NO. ZH2411220270136 dated 24.11.2022 (APPEAL NO. GAPPL/ADC/GSTP/908/2023) :

The refund amount of Rs.4,42,856/- has been rejected on the following grounds:

-The refund amounting to Rs.4,09,147/- has been rejected on the ground that the explanation to Rule 89(4) of CGST Rules, pertaining to deriving the value of goods exported out of India (lower of FOB value or invoice value) shall not be applicable for calculating the Adjusted Total Turnover and hence, the value of Adjusted Total Turnover shall be taken as per GSTR-1/3B for the purpose of calculating refund.

- The ITC amounting to Rs. 1,64,255/- are not eligible for the purpose of refund application as the said invoices are not reflected /not matched with GSTR-2A and consequently, the refund amounting to Rs. 33,709/- has been rejected.

2. ORDER NO. ZK2411220234603 dated 22.11.2022 (APPEAL NO. GAPPL/ADC/GSTP/909/2023) :

The refund amount of Rs.6,77,712/- has been rejected on the following grounds:

- The refund amounting to Rs.6,24,828/- has been rejected on the ground that the explanation to Rule 89(4) of CGST Rules, pertaining to deriving the value of goods exported out of India (lower of FOB value or invoice value) shall not be applicable for calculating the Adjusted Total Turnover and hence, the value of Adjusted Total Turnover shall be taken as per GSTR-1/3B for the purpose of calculating refund.

- The ITC amounting to Rs.3,08,860/- are not eligible for the purpose of refund application as the said invoices are not reflected /not matched with GSTR-2A and consequently, the refund amounting to Rs. 52,884/- has been rejected.

3. ORDER NO. ZM24112220371982 dated 28.12.2022 (APPEAL NO. GAPPL/ADC/GSTP/1183/2023) :

The refund amount of Rs.29,06,468/- has been rejected on the following grounds:

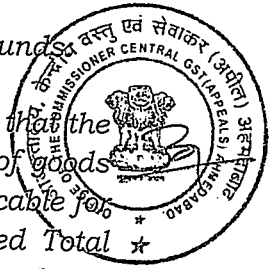
- The refund amounting to Rs. 28,70,336/- has been rejected on the ground that the explanation to Rule 89(4) of CGST Rules, pertaining to deriving the value of goods exported out of India (lower of FOB value or invoice value) shall not be applicable for calculating the Adjusted Total Turnover and hence, the value of Adjusted Total Turnover shall be taken as per GSTR-1/3B for the purpose of calculating refund.

- The ITC amounting to Rs.1,37,624/- are not eligible for the purpose of refund application as the said invoices are not reflected /not matched with GSTR-2A and consequently, the refund amounting to Rs. 36,133/- has been rejected.

3. Being aggrieved with the impugned order(s), the appellant preferred appeal(s) on the following grounds:

A. The explanation to Rule 89 for deriving value of goods exported shall be applicable to entire rule.

1. The mere ground for rejecting the partial refund claim(s) by the adjudicating authority is that explanation to Rule 89(4) of CGST Rules, 2017 pertaining to deriving the value of goods exported out of India (lower of FOB value or Invoice value) shall not



be applicable for calculating the Adjusted Total Turnover and hence, the value of Adjusted Total Turnover shall be taken as per GSTR-1/3B.

2. The explanation to Rule 89(4) has been inserted vide Notification No. 14/2022-Central Tax dated 05.07.2022, which has been re-produced below:

“Explanation – For the purposes of this sub-rule, the value of goods exported out of India shall be taken as –

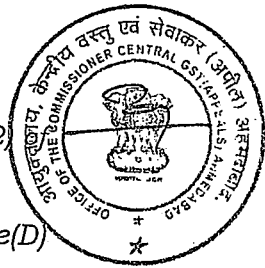
- (i) *The Free on Board (FOB) value declared in the Shipping Bill or Bill of Export Form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or*
- (ii) *The value declared in tax invoice or bill of supply, Whichever is less.”*

As per the above explanation, for the purpose of Rule 89(4), the value of goods exported out of India shall be taken as lower of (i) Free on Board value (FOB) or (ii) Invoice value. The explanation mandates that the value of goods exported out of India be taken as the FOB value or Invoice value whichever is less, the said mandate is applicable for the entire sub-rule since the explanation starts with the words *“for the purpose of this sub-rule”*. Further, the definition of the terms to be used in the formula for calculating the amount of eligible refund are also contained within the same sub-rule only. It is therefore, a natural corollary that the explanation would be applicable in respect of the definitions of all the terms contained in Rule 89(4), and not only to the calculation turnover or zero-rated supply of goods as contented by the adjudicating authority.

3. The definition of “Adjusted Total Turnover” as provided under Rule 89(4) of the CGST Rules, 2017, is re-produced as under:

“(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) 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.*



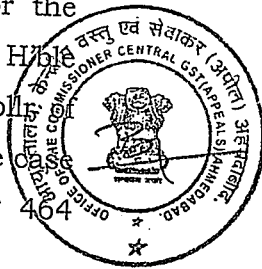
4. The above definition under clause (a) refers to the turnover in a State under Section 2(112) of CGST Act, 2017, for the purpose of deriving value of Adjusted Total Turnover. Hence the said section 2(112) of CGST Act, as re-produced below will have

to be referred in order to understand the value of turnover in a State that has to be considered for deriving the value of Adjusted Total Turnover in the purpose of calculating refund amount as per Rule 89(4):

"(112) 'turnover in State' or 'turnover in Union territory' means the aggregate value of all taxable supplies (excluding the value of inward supplied 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."

5. As per the above definition, the "exports of goods" or services are to be included in the "turnover in a State". What shall be the value of such "exports of goods" has not been defined in the said Section 2(112). It is to be noted that for the purpose of Rule 89(4), the value of exports of goods shall be taken as the lower of FOB value or invoice value. Hence, it is very clear that for the purpose of calculation of refund amount in the case of zero-rated supplied without payment of tax under bond or letter or undertaking, the value of exported goods shall be taken as provided in the Notification No. 14/2022-CT dated 05.07.2022 i.e lower of FOB value or the invoice value. Accordingly, the value of export of goods in the **numerator as contained in turnover of zero-rated supply of goods** as well as in the **adjusted total turnover in denominator** should be taken as lower of FOB value or the invoice value in line with the explanation to Rule 89(4) of the CGST Rules. In the present case, the explanation has been made applicable to the entire sub-rule and hence, adopting the view that explanation will be applicable to one definition of rule and not to another, is completely irrational. For the interpretation of the explanation, they made reliance on (i) the judgment of Hon'ble Supreme Court in case of M/s. Navin Chemicals Mfg. and Trading Vs. Collector of Customs - 1993 (68) ELT 3 (SC) and (ii) decision of CESTAT New Delhi in the case of Commissioner of C.Ex, Jaipur Vs. J K Synthetics - 1998 (99) ELT 464 (Tribunal).

6. From the above formula and explanation, it can be inferred that the intention of law is to resolve the disputes arising due to different values of export of goods adopted by taxpayers at the time of claiming refund and therefore, in order to ensure uniformity, the explanation to Rule 89(4) has been inserted to consider the lower value of export of goods for the formula of sub-rule (4). If different values are adopted for same supply i.e export of goods in formula for calculation of refund, it will lead to such an absurd interpretation. It is therefore, the contention raised by the adjudicating authority that "the value of exported goods for calculation of Adjusted Total Turnover" should be taken as per GSTR-1/3B and not according to the explanation provided under the sub-rule, deserves to be set aside.



B. The impugned order is non-speaking, non-reasoned passed without considering the substantial please made by the appellant.

7. The appellant submitted that the impugned order passed by the adjudicating authority is non-speaking, non-reasoned and passed without considering the substantial pleas made by the appellant. And on this ground along, the impugned order is liable to be set aside as being invalid and bad-in-law to the extent it is prejudicial to the interest of the Appellant where partial refund is rejected. The adjudicating authority in impugned order at Point 9(iv) and (v) has merely reproduced the explanation to Rule 89(4) of CGST Rules, 2017 and definition of "Adjusted Total Turnover" as per Section 2(112) of the CGST Act, 2017 and concluded that the value of Adjusted Total Turnover will be taken as per GSTR-1/3B for the purpose of refund calculation. The adj. authority failed to give reasons as to how the explanation to Rule 89(4) will only be applicable for computing "turnover of zero-rated supply of goods" and not to "Adjusted total turnover".

C. The invoices are reflected in GSTR-2A and hence, ITC on such invoices should not be rejected.

8. The ground on which refund of Rs.33,709/-, Rs. 52,884/- and Rs. 36,133/- respectively is that the invoices pertaining of ITC has not been reflected / not matched with GSTR-2A and hence the ITC on such invoices is/ are not eligible for the purpose of calculating refund.

(i) In this regard, it is submitted that the appellant has availed Net ITC i.e total ITC as per the invoices less credit note(s) issued by the supplier(s), however, the supplier(s) has not declared the credit note(s) in their GSTR-1 and hence, such credit note(s) are not reflected in the GSTR-2A of the appellant. However, the invoices on which ITC has been availed are correctly reflected in GSTR-2A and ITC has been rightly availed by the appellant.

(ii) Further, it is submitted that due to non-reporting of credit note(s) by the supplier(s), the amount of ITC reflected in GSTR-2A is higher as compared to ITC availed by the Appellant. However, the appellant has availed ITC after reducing the value of credit note(s) thereby availing lesser ITC. While the appellant has availed lesser ITC, the adjudicating authority has disallowed the entire ITC.

It is further requested to set aside the impugned order passed by the adjudicating authority and allow the appeal with consequential relief.



PERSONAL HEARING :

4. Personal hearing in the matter on all these three appeals held on 9.2.2023 in person. Mr. Tapas Ruparelia and Mr Nirmmit Shah, both Chartered Accountant, appeared personally on behalf of the appellant in all these three appeals as authorized representative. During P.H. they submitted that (i) as regards the denominator, in the formula, FOB has to be taken in the adjusted total turnover as per Rule 89(4) and not the invoice value. Therefore two different value of export should not be taken by the Ld. Refund Sanctioning Authority and (ii) as regards the difference in GSTR-2A and actual invoice value, the appellant has availed ITC after reducing the Credit Note value only and which is considered for calculation of Refund and not amount of ITC in GSTR-2A. Thus they have claimed only admissible amount of refund after reducing credit note(s) ITC.

DISCUSSION AND FINDINGS:

5. I have gone through the facts of the case, written submissions made by the 'appellant' alongwith appeal memorandum, submissions during personal hearing and documents available on record. Since the issue involved in all the present three appeal(s) are identical in nature, all these appeals are disposed of, through a common order. I find that the following two issues to be decided in the instant case(s) is (1) whether the partial refund rejection order(s) for the period (i) April 2021 to June 2021 (ii) July-2021 to Sept-2021 and (iii) October-2021 to March-2022 passed by the Adjudicating Authority are in conformity with Section 54 of CGST Act, 2017 read with Rule 89(4) of CGST Rules 2017 (in light of Notification No. 14/2022-Central Tax dated 5.7.2022) and are legal and proper or otherwise? And;

(2) The ITC availed by the appellant as mentioned in the respective impugned refund Order(s) are eligible or not for the purpose of refund calculation as the invoices are not reflected / not matched with the GSTR-2A of the appellant.

6. I find that all the three refund claims have been passed by the adjudicating authority on 24.11.2022 (Order No. ZH2411220270136), 22.11.2022 (Order No. ZK2411220234603) and 28.12.2022 (Order No. ZM2412220371982) respectively and communicated to the appellant on same day. The appellant filed present appeal(s) on 23.02.2023, 21.02.2023 and 27.03.2023 respectively i.e. within three months time limit, and accordingly the present appeal(s) are filed within the time limit respectively as prescribed under Section 107(1) of the CGST Act, 2017, hence same are considered as filed within time limit.



6.1 I find that in the present appeal(s) the appellant contended that Adjudicating Authority has rejected the partial refund claim(s) merely on the ground pertaining to deriving the value of goods exported out of India (lower of FOB value or Invoice value) shall not be applicable for calculating the Adjusted Total Turnover (i.e in denominator) and hence erred in calculating the *Adjusted Total Turnover* and *Zero rated turnover* as per the Rule 89 of the CGST Rules, 2017, and the value of Adjusted Total Turnover has been taken as per GSTR-1/3B.

For this, I refer to the Rule 89(4) of the CGST Rules, 2017, under which various definitions for claiming input tax credit refund, the relevant definitions are reproduced as under:

Rule 89 (4) of the CGST Rules, 2017:

“Rule 89 (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 Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula-

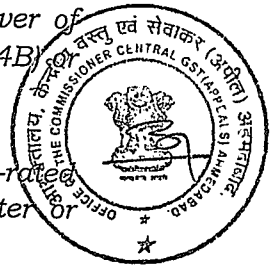
Refund Amount = (Turnover of Zero rated supply of goods + Turnover of zero-rated supply of services) X Net ITC / Adjusted Total Turnover

Where-

- (A) *“Refund Amount” means the maximum refund that is admissible;*
- (B) *“Net ITC” means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rule (4A) or (4B) or both;*
- (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-rule (4A) or (4B) both.
- (D) ***“Turnover of Zero-rated supply of services”*** means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

- (E) ***“Adjusted Total Turnover”*** means the sum total of the value of:
- the turnover in a State or a Union Territory, as defined under clause (112) of Section 2, excluding the turnover of services; and*
 - 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.
.....”

Further, the term “Turnover in a State or a Union Territory” has been defined vide Section 2(112) of the CGST Act, 2017, which is reproduced below:

“Section 2(112): “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 reversed 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“

6.2 Further, I refer to the Para-4 of the CBIC’s Circular No. 147/03/2021-GST dated 12.03.2021 under which it has clarified 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.

6.3 I also refer to the explanation to Rule 89(4) has been inserted by the Board vide Notification No. 14/2022-Central Tax dated 05.07.2022, the relevant text reproduced as below:

“8. In the said rules, in rule 89,-

(a)

(b)

(c) In sub-rule(4), the following Explanation shall be inserted, namely”-

“Explanation.- For the purposes of this sub-rule, the value of goods exported out of India shall be taken as-

(i) **the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bills and Bill of Export (Forms) Regulations, 2017; or**

(ii) **the value declared in tax invoice or bill of supply, whichever is less.”.**

6.4 From the above para 6.1 to 6.3, it is clear that for the purpose of sub-rule (4) of Rule 89, the value of goods exported out of India shall be taken as lower of Free on Board Value or Invoice value and is applicable for the entire sub-rule which mentioned as “for the purpose of this sub-rule” in Notification No.14/2022-CT dated 5.7.2022. I find that the adjudicating authority has erred while calculating the



Refund amount under Rule 89(4) of the Act, and I am of the considered opinion that same value should be taken in Numerator as well as Denominator.

Here, I find that the adjudicating authority has considered and calculated *adjusted total turnover* by taking the value as per GSTR-1/3B in denominator of the refund formula, but the adjudicating authority erred to consider it in numerator also in the refund formula, which resulted into increase *adjusted total turnover* in the denominator. From the above, I am of the view that *adjusted total turnover* should be calculated as per explanation to Rule 89(4) vide Notification No. 14/2022-CT dated 05.07.2022 and as per the provisions of Rule 89 of CGST Rules, 2017 and export value from GSTR-1/3B need not to be taken while computing the refund amount.

From the above, in my opinion, I find that the adjudicating authority should adopt single approach for computation of refund amount in the refund formula instead of adopting two different approaches to determine the same. This means, same values of exports of goods should be taken into numerator and denominator while computing the refund amount. Thus, I find that the adjudicating authority has erred in the impugned order(s) for computing the refund amount(s) which is/are not proper and legal as per the Rule 89(4) of CGST Rules, 2017 and thus erred in sanctioning of partial refund amount(s) while passing the impugned order(s).

7. The second issue in the present appeal(s) is that the adjudicating authority has observed that for the ITC amount(s) mentioned in impugned order(s), the appellant are not eligible for the purpose of refund calculation as the said invoices are not reflected / not matched with respective month's GSTR-2A and consequently, the refund amount(s) have been rejected vide impugned order(s) respectively.

In the present appeal(s), I find that during the course of verification of subject refund claim(s) filed by the appellant, it has been noticed by the adjudicating authority that the invoices of Annexure-B submitted / uploaded by the appellant are not reflected in GSTR-2A/ amount of invoices not matched with the uploaded invoices or invoice numbers are not matched. Therefore, the ITC of these invoices are not eligible for the purpose of refund calculation.

7.1 In this regard, I would like to refer to the Para-5 of the CBIC's Circular No. 135/05/2020-GST dated 31.03.2020, which is re-produced as below:

"5. Guidelines for refund of Input Tax Credit under Section 54(3):

5.1

5.2 *The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant....."*



The aforesaid Circular No. 135/05/2020-GST dated 31.03.2020, is further clarified vide Circular No. 139/09/2020-GST dated 10th June 2020 by the Board, wherein, as per Para 3.2 of it has been decided and clarified that

"3.2 In this context, it is noteworthy that before the issuance of Circular No. 135/05/2020-GST dated 31st March 2020, refund was being granted even in respect of credit availed on the strength of missing invoices (not reflected in **FORM GSTR-2A**) which were uploaded by the applicant along with the refund application in the common portal. However, vide Circular No. 135/05/2020-GST dated 31st March 2020, the refund related to these missing invoices has been restricted. Now, the refund of accumulated ITC shall be restricted to the ITC available on those invoices, the details of which are uploaded by the supplier in **FORM GSTR-1** and are reflected in the **FORM GSTR-2A** of the applicant."

From the above, it is very clear that the appellant will only be eligible for those ITC amount as per those invoices, the details of which are uploaded by their supplier(s) in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Hence, I uphold the order passed by the adjudicating authority to this extent.

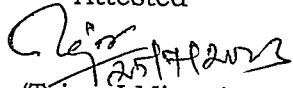
8. Considering the above facts, the *adjudicating authority* is hereby directed to process the refund application(s) of the *appellant* by applying the single approach for taking value of exports as per the Rule 89(4) i.e FOB value declared in Shipping or Invoice value declared in tax invoice, whichever is less and same value of export shall be taken in formula while calculating the total adjusted turnover. The '*Appellant*' is also directed to submit all the relevant documents/submission before the *adjudicating authority*.

9. In view of above discussions, the *impugned order(s)* passed by the *adjudicating authority* is/are modified for being not legal and proper as per Section 54 of the CGST Act, 2017 read with Rule 89(4) of the CGST Rules, 2017 and the refund amount shall be re-determined, accordingly I partially allow the present appeal(s) of the "*Appellant*" without going into merit of all other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017. As regards the ITC on invoices not reflected /or mismatched in GSTR-2A, I reject the appeal(s) on the ground discussed in para 7 to 7.1.

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

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

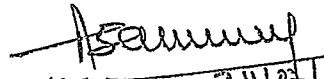
Attested


(Tejas J Mistry)
Superintendent,
Central Tax (Appeals), Ahmedabad

By R.P.A.D.

To

M/s. Otsuka Pharmaceuticals India Pvt Ltd., [GSTIN : 24AAFCC0602G1ZD],
199-201, 206 to 210, Village Vasna Chacharwadi, Taluka - Sanand,
Ahmedabad, Gujarat - 382213


(Adesh Kumar Jain) 24.07.2023
Joint Commissioner (Appeals)
Date: 24.7.2023



Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Ahmedabad North Commissionerate.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division- IV,
Ahmedabad North Commissionerate.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North Comm'te.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the
OIA on website.
7. Guard File./ P.A. File.

