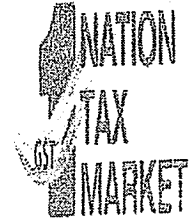




सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in

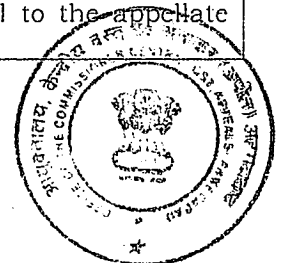


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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/1187/2023 / 1115 - 21
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-32/2023-24 and 31.07.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	03.08.2023
(ङ)	Arising out of Order-In-Original No. ZG2401230144393 dated 12.01.2023 passed by The Assistant Commissioner, CGST, Division-IV, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Mylan Laboratory Ltd. (GSTIN-24AADCM3491M2Z6), Zyodus-Pharma SEZ, Plot No. 20 and 21, Matoda Village, Matoda, Sanand, Ahmedabad-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 अपीलिय 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 :**

M/s Mylan Laboratories Limited, Zydus Pharma SEZ, Plot No.20 and 21, Matoda Village Matoda, Ta-Sanand, Ahmedabad, Gujarat - 382 213 (hereinafter referred to as *the 'Appellant'*) has filed the present appeal against the Order No. ZG2401230144393 dated 12.01.2023 (hereinafter referred to as the *'impugned order'*) rejecting refund claim amounting to Rs. 4,79,564/- passed by the Assistant Commissioner, CGST & C. Ex., Division- IV, Changodar, Ahmedabad North Commissionerate (hereinafter referred to as *the 'adjudicating authority'*) in respect of Export of Goods/Service without payment of tax (Accumulated ITC).

2 (i). Briefly stated the facts of the case are that the *'Appellant'* is holding GST Registration No. 24AADCM3491M2Z6 and has filed the present appeal on 09.03.2023. The appellant are engaged in manufacturing of Formulation Pharmaceuticals Products as "SEZ Unit". The appellant had filed a refund claim in form of GST-RFD-01 vide ARN No. AA241122095712H dated 25.11.2022 for Rs. 51,00,690/- under the category of "EXPORTS OF GOODS / SERVICE - W/O PAYMENT OF TAX (ACCUMULATED ITC) for the tax period **October-2021 to December-2021** under Section 54 of the CGST Act, 2017. Thereafter, the appellant have been issued a Show Cause Notice No. ZF241220216748 dated 16.12.2022 by the Assistant Commissioner, CGST & C.Ex, Division-IV, Ahmedabad North Commissionerate, on the grounds that

"A. During the course of verification of above refund claim, it has been noticed that Adjusted Total Turnover in RFD-01 is mentioned as Rs. 82,04,02,466/- whereas the same is found to be Rs. 90,55,40,803/- as per GSTR-3B which is required to be considered for the calculation of admissible refund.

B. Considering the above observation, refund may be restricted to Rs.46,21,126/- as calculated hereunder:

	Turnover of Zero rated Supply	Adjusted Total Turnover	Net Input Tax Credit	Refund
As per RFD-01	800077242	820402466	5230268	5100690
Adjusted Total Turnover as per GSTR-3B	----	905540803	----	----
Considering above observation	80077242	905540803	5230268	4621126
Refund liable for rejection Rs.				479564

The appellant submitted their reply in FORM GST-RFD-09 vide reference no. ZF2412220216748 dated 31.12.2022. Further, the adjudicating authority has rejected the refund claim vide impugned order in Form GST-RFD-06 stating in discussion and findings in para 8 & Para 9 that

“8. Regarding consideration of the turnover of Zero rated supply, Explanation added after 89(4)(F) of CGST vide Notification No. 14/2022-CT dated 05.07.2022 as below:

[Explanation:- For the purpose 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.]

9. The claimant has shown “Adjusted Total Turnover” for the Oct-21 to Dec-21 as per RFD-01 to the tune of Rs. 82,04,02,466/- whereas the same is found to the tune of Rs. 90,55,40,803/- as per the figures shown in GSTR-3B/GSTR-1. The manner of calculation of Adjusted Total Turnover under Rule 89(4)(E) of the CGST Rules, 2017 which is 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) of 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.]”

As per the above explanation, the adjusted total turnover of the claimant for the period Oct-21 to Dec-21 as per the volume shown in their GSTR-3B/GSTR-1 for the subject period comes to Rs. 90,55,40,803/-. However, the claimant has claimed the adjusted total turnover to the tune of Rs. 82,04,02,466/- in their RFD-01 dtd 25.11.2022. Therefore, as per the manner of calculation of adjusted total turnover under rule 89(4) of the CGST Rules, 2017, I find that the Adjusted Total Turnover is rightly calculated and it comes to Rs. 90,55,40,803/- on the basis of figures show in their GSTR-3B/GSTR-1 for the subject period and same is considered for the calculation purpose.



10. Details of computation of refund claim amount and the admissible amount is tabulated as under as per the above observation:

	Turnover of Zero rated Supply	Adjusted Total Turnover	Net Input Tax Credit	Refund
As per RFD-01	800077242	820402466	5230268	5100690
Adjusted Total Turnover as per GSTR-3B	----	905540803	---	---
Considering above observation	80077242	905540803	5230268	4621126
Refund liable for rejection Rs.				479564

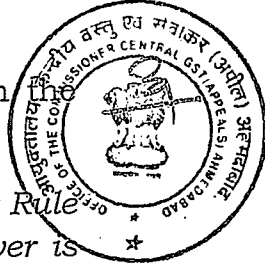
11. The qualifying / eligible amount of Refund calculated on the basis of the documents viz. GSTR-3B/GSTR-1, statement-3, Annexure-B uploaded/filed, by the claimant comes to Rs. 46,21,126/- .. “

2 (ii). Being aggrieved with the impugned order the appellant has filed the present appeal on 09.03.2023 mainly on the following grounds that-

- The adjudicating authority has erred in rejecting the refund on ground that,

“as per the manner of calculation of adjusted total turnover under Rule 89(4) of CGST Rules, 2017, I find that the Adjusted total turnover is rightly calculated and it comes to Rs.90,55,40,803/- on the basis of figures shown in their GSTR-3B/GSTR-1 for the subject period and same is considered for the calculation purpose. Accordingly, the qualifying / eligible amount of Refund calculated on the basis of the documents viz. GSTR-3B/GSTR-1, Statement-3, Annexure-B uploaded/ filed, by the claimant comes to Rs. 46,21,126/- and reject refund of Rs. 4,79,564/-.”

The appellant submitted that for the refund purpose of Rule 89(4), zero-rated / export turnover value cannot be considered as per GSTR-3B and same needs to work-out as per amended definition of Rule 89(4)(C) of CGST Rules, 2017. Accordingly, in terms of Rule 89(4)(C) of CGST Rules, 2017, the appellant considered **whichever lower export/ zero rated turnover to the tune of Rs. 82,04,02,466/-** instead Rs. 90,55,40,803/- (i.e value mentioned in GSTR-3B) and same also accepted by the adjudicating authority as eligible export / zero rated turnover while calculating refund under Rule 89(4) of CGST Rules, 2017. For the purpose of Rule 89(4), the value of export / zero rated supply of goods to be included while calculating “Adjusted Total Turnover” will be same as being determined as per the amended



definition of “Turnover of zero-rate supply of goods” in the said sub-rule. Whereas, the adjudicating authority failed to consider same turnover i.e zero rated turnover while calculating “Adjusted total turnover”.

- Further, the appellant submitted that as per para 4.5 & 4.6 of the Circular No. 147/03/2021-GST dated 12.03.2021 that “**for the purpose of Rule 89(4), the value of export/zero-rated supply of goods to be included while calculating “adjusted total turnover” will be same as being determined as per the amended definition of “Turnover of zero-rate supply of goods in the sub-rule...”**
- On the basis of the CBIC’s Circular No. 147/03/2021-GST dated 12.03.2021, the appellant workout Zero rate turnover as under :

Outward supply	Turnover [(as per GSTR-3B] (in Rs.)	Turnover as per amended definition (in Rs.)
Local	1,92,45,243/-	1,92,45,243/-
Supply to SEZ	10,79,981/-	10,79,981/-
Export	88,52,15,579/-	80,00,77,242/- (Invoice value or Shipping Bill FOB value or 1.5 times the value of same / similar goods in domestic market) Zero Rated Turnover whichever is less under Rule 89(4)(C) of CGST Rules 2017
Total Adjusted Turnover as per para 4.6 of CBIC Circular No. 147/03/2021-GST dated 12.03.2021		82,04,02,466/-



Accordingly, refund is eligible as follows :

The formula for calculation of refund as per Rule 89(4):

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} / \text{Adjusted Total Turnover}$$

$$\text{Refund amount} = \text{Rs. } 80,00,77,242/- \times \text{Rs. } 52,30,268/- / \text{Rs. } 82,04,02,466/-$$

$$\text{Refund amount} = \text{Rs. } 51,00,690/-$$

The adjudicating authority failed to consider the para 4.6 of the CBIC Circular No. 147/03/2021-GST dated 12.03.2021 and wrongly consider the total turnover as per GSTR-3B.

- Further, the similar issue was already settled vide Order-in-Appeal NO. AHM-CGST-002-APP-ADC-144/2022-23 dated 30.01.2023 passed by the Additional Commissioner, CGST Appeals, Ahmedabad, wherein, in para 8 and 9, it is held that

*"I find that as per definition of adjusted total turnover, defined in clause (E) of sub-rule(4) of Rule 89, the adjusted total turnover includes value of all outward supplies of goods and services made during the relevant period including zero-rated (export) supply of goods but exclude value of inward supplies which are liable to reverse charge. Thus, in formula prescribed under Rule 89(4) of CGST Rules "the value of zero rated turnover of goods" comes at numerator as well as in "total adjusted turnover" as denominator. As per clarification issued vide CBIC Circular No. 147/03/2021-GST dated 12.03.2021 [Para 4.6], the value taken for turnover of zero rated supply of goods taken at numerator as per Clause (C) of rule 89(4) need to be taken as value of zero rated supply of goods in adjusted total turnover in the formula. In other words, turnover value of zero rated supply of goods at numerator and turnover value of zero rated supply in adjusted total turnover at denominator should be the same....
9....."*

- For the reasons and grounds mentioned above, the appellant prayed that the impugned order may be set aside and or with consequential relief and allow refund in full.

PERSONAL HEARING :

3. Personal Hearing in the matter was held on 20.07.2023, wherein Mr. Mahesh Patel, Manager, appeared in person on behalf of the 'Appellant' as Authorized Representatives before the appellate authority. He stated that he has nothing more to add to their written submission. During the personal hearing, vide letter dated 20.07.2023 they made additional submissions and stated that in the past, similar issue already decided in their favour vide OIA No. AHM-CGST-002-APP-ADC-144/2022-23 dated 30.01.2023 passed by the Additional Commissioner, CGST Appeals, Ahmedabad, and submitted copy thereof.

DISCUSSION AND FINDINGS :

5. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the appeal memorandum & additional submission; I find that the 'Appellant' had preferred the refund application before the refund sanctioning authority. The refund sanctioning authority [Adjudicating Authority] has partially sanctioned i.e Rs. 46,21,126/- (Out of Rs. 51,00,690/-) and partially rejected refund amount i.e Rs. 4,79,564/- the refund application vide impugned order, as mentioned in Para 2(i) above. Accordingly, the appellant has preferred the present



appeal. The main issue to be decided in the matter is whether the impugned order is legal and proper or otherwise?

5.1 I find that in the present appeal the appellant contended that Adjudicating Authority has erred in calculating the Total Adjusted Turnover and Zero rated turnover as per the Rule 89 of the CGST Rules, 2017. For better appreciation of facts, 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 re-produced 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-

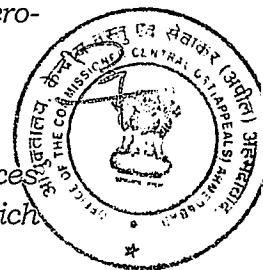
Refund Amount = (Turnover of Zero rated supply of goods + Turnover of zero-rated supply of services) X Net ITC / Adjusted Total Turnover

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 or 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) or 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 or 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:*
- (a) *the turnover in a State or a Union Territory, as defined under clause (112) of 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.

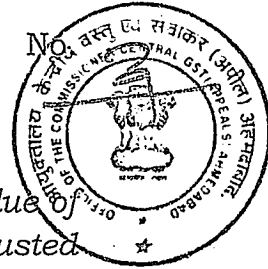
.....”

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“

5.2 Here, I also 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 “4.....

4.6 Accordingly, it is clarified that for the purpose of Rule 89(4), the value export/ zero rated supply of goods to be included while calculating “adjusted total turnover” will be same as being determined as per the amended definition of “Turnover of zero-rated supply of goods” in the said sub-rule.”



From the above para 5.1 and 5.2, I find that as per the definition of adjusted total turnover, defined in clause (E) of sub-rule (4) of Rule 89, the adjusted total turnover includes value of all outward supplies of goods and services made during the relevant period including zero rated (export) supply of goods but exclude value of inward supplies which are liable to reverse charge. Thus, in the formula prescribed under Rule 89(4) of CGST Rules “the value of zero rated turnover of goods” comes at numerator as well as in “Adjusted Total Turnover” at denominator.”

5.3 Further, I also refer to the CBIC’s Notification No. 14/2022-CT dated 05.07.2022, the operational part is re-produced as 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 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.]**


6. Here, in the present case, I find that the amount whichever is less (from the FOB Value of shipping bill or tax invoice value declared as per Notification NO. 14/2022-CT dated 05.07.2022) needs to be considered for "Total turnover of Zero Rated Supply" i.e Rs. 80,00,77,242/- & accordingly in "Adjusted Total Turnover" i.e Rs. 82,04,02,466/- which is considered by the appellant while calculating refund amount, however, the adjudicating authority has considering the value of Turnover of zero rated supply as per GSTR-3B i.e Rs. 80,00,07,242/- and Adjusted Total Turnover as per GSTR-3B i.e Rs. 90,55,40,803/-, which I find here is factually not correct and not in consonance with statutory provisions. Therefore, I am of the considered view that the same value of zero rated supply of goods taken as turnover of zero rated supply of goods needs to be taken in adjusted total turnover also. Further, I find that, previously in the similar issue of the appellant, the matter has already been decided by the then appellate authority vide Order-In-Appeal No. AHM-CGST-002-APP-ADC-144/2022-23 dated 30.01.2023. Therefore, I hold that the impugned order passed by the adjudicating authority rejecting the refund claim of Rs. 4,79,564/- (Out of Rs. 51,00,690/-) is not legal and proper under Section 54 of the CGST Act, 2017 read with rule 89(4) of the CGST Rules, 2017 and in terms of CBIC Notification No. 14/2022-CT dated 05.07.2022 and Circular No. 147/03/2021-GST dated 12.03.2021, and deserve to modified. Accordingly, I order to modify the impugned order to the above extent and allow the appeal filed by the appellant.

7. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is not legal and proper and accordingly, I allow the appeal of the "Appellant" and without going into the 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 to the above extent.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeals filed by the *appellant* stands disposed of in above terms.


(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 31.7.2023

Attested


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

By R.P.A.D.

M/s Mylan Laboratories Limited,
Plot No. 20 and 21, Zydus-Pharma SEZ,
Vill. Matoda, Ta-Sanand,
Ahmedabad, Gujarat - 382 213



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 Comm'te.
4. The Additional Commissioner, Central Tax (System), Ahmedabad North Commissionerate.
5. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-IV, Ahmedabad North Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad for publication on website.
- ✓ 7. Guard File.
8. P.A. File.

