



ORDER-IN-APPEALBRIEF FACTS OF THE CASE:

M/s. Hindustan Gum & Chemicals Ltd. (GSTIN 24AAACH7214E1Z3), Block NO.780 and 780 A/P, Hindustan Gum And Chemicals Ltd, Ahmedabad-Viramgam Highway, Jakhwada, Ahmedabad, Gujarat, 382150 (hereinafter referred to as the "Appellant") has filed appeal Against OIO No. ZE2408230245578 dated 17-08-2023 issued by the Assistant Commissioner, CGST & C.Ex., Division III, Ahmedabad-North Commissionerate, Ahmedabad (herein after referred as the "impugned order").

2. Brief facts of the case are that the Appellant registered under GSTIN 24AAACH7214E1Z3 filed a refund application dated 26.04.2023 for the tax period **JULY-2022 TO SEPTEMBER-2022** amounting to Rs.5,87,940/- in respect of export of goods/service without payment of tax (accumulated ITC) under FORM-GST-RFD-01. On preliminary scrutiny of the claim submitted by the applicant, certain discrepancies were noticed for which a Show Cause Notice No. ZM2406230345209 in FORM-GST-RFD-08 dated 23.06.2023 was issued to the claimant on following :

ITC in RFD-01 is mentioned as Rs. 866176/- whereas the same is found to be Rs. 587683/- as per GSTR-3B of the claim period. Therefore, Rs. 587683/- only be considered for refund calculation as per Rule 89 of CGST Rules, 2017.

Considering above observation, the refund may be restricted to Rs.398905/- as calculated hereunder:

	Turnover of Zero rated supply	Adjusted Total Turnover	Net Input Tax Credit (Cess)	Refund (Cess)
As per RFD-01	408567876	601918484	866176	587940
GSTR-3B	--	--	587683	--
Recalculated Refund Claim	408567876	601918484	587683	398905
Refund Claim liable for Rejection				189035

3. The adjudicating authority vide the impugned order, sanctioned refund of Rs.3,98,905/- and rejected the refund claim of Rs.189035/- filed by the appellant.

4. Being aggrieved with the impugned order, the Appellant filed the present appeal on 15.09.2023 on the grounds that:

- > The Appellant availed Input tax credit (Cess) to the tune of Rs. 9,81,048/- during Jul-22 to Sep-22 and declared the same in Table 4A of GSTR-3B. Since the CGST Rule 42 mandates to reversal ITC(cess) proportionately to

the extent of exempt supply, the appellant reversed ITC(cess) for a sum of Rs. 54,872/- as it made domestic supply to the tune of Rs. 3,81,31,329/- during the relevant tax period. After reducing above reversal of ITC(cess), balance Net ITC which worked out to be Rs. 8,66,176/- [ Rs. 9,21,048/- Less Rs. 54,872/-] is attributable to Zero Rated Supply made on LUT as well as on payment of IGST. This amount is considered by appellant in its refund claim application.

- As stated above, the appellant is engaged mainly in Zero rated Supply either made on LUT or on payment of IGST. As per Sec. 54(3) of CGST Act read with Rule 89(4), the appellant is eligible for refund claim of unutilized ITC(cess) to the extent of zero rated supply made on LUT whereas as per 3rd proviso to Sec. 54(3) of the CGST Act, it is not eligible to seek refund on Zero-Rated supply made on payment of IGST.
- The appellant computed the refund proportionately to the extent of Zero-Rated supply made on LUT which worked out to be Rs.5,87,940/- and reversed the balance non-refundable ITC (cess) of Rs. 2,78,236/- [ Rs. 8,66,176/- Less 5,87,940/-] attributable to Zero-Rated supply made on payment of IGST. Such suo moto reversal of ITC(cess) was reflected in Table 4(B) of FORM GSTR-3B.
- The Ld. Assistant Commissioner partially rejected the claim on the ground that refund will be computed considering Net ITC as per FORM GSTR-3B and referred Circular No. 170/02/2022 - GST dated 06.07.2022 wherein it is written that any reversal of ITC or any ITC which is ineligible under any provisions of the CGST Act should not part of NET ITC. It seems from the finding of the Ld. Assistant Commissioner that he has not read the entirety otherwise, the appellant would have got the full claim.
- Had the appellant not reversed the input tax credit (cess) in the FORM GSTR-3B, the Ld. Assistant Commissioner would have granted the refund as it was doing in the past. Merely reporting by the appellant reversal of ITC(cess) in Table 4(B) of FORM GSTR-3B, led the Ld. Assistant Commissioner to partially reject the refund which otherwise was eligible.
- The appellant would like to draw your Honour's kind attention towards a Judgment passed by Hon'ble Madras High Court in the case of ABL Technologies vs. Asstt. Commissioner of Custom, Tuticorin [ 2022 (65) G.S.T.L. 30 Madras] wherein the Hon'ble High Court held that refund, which would otherwise payable, should not be held for the technicality involved in the system. The relevant para 11 of above order for your kind reference- 11. In my view, the procedures under Rule 96 of CGST Rules, 2017 cannot be applied strictly to deny legitimate export incentives that are available to an exporter. In this connection, a reference was made to the decision of the Hon'ble Supreme Court in the case of Commissioner of Sales Tax, UP. v. Auriaya Chamber of Commerce, Allahabad reported in 1986 25) E.L.T. 867 (S.C.), wherein the Hon'ble Supreme Court held that procedures are nothing but handmaids of justice and not mistress of law. In my view, the procedures prescribed under the aforesaid Rules should not be applied strictly so as to defeat the legitimate export incentives, which an exporter otherwise would have been entitled to but for the technicality involved in the system.

The appellant has further requested that 0-1-0 is liable to be set aside on these grounds and the refund claim of the Appellant is to be allowed with consequential relief.

**Personal Hearing :**



5. Personal hearing in the present appeal was held on 18.10.2023. Shri Pradeep Kataria, Chartered Accountant appeared on behalf of the Respondent and reiterated the written submissions and requested to allow the appeal.

### 6 Discussion and Findings:

6.1. I have carefully gone through the facts of the case and the submissions made by the Appellant in their grounds of appeal and observe that the Appellant is mainly contesting with the amount of Net Input Tax Credit of Cess amounting to Rs.8,66,176/- not taken into consideration by the adjudicating authority for computation of refund, while sanctioning the Refund applied for, by the appellant of Rs.5,87,490/- for the period July-2022 to September-2022.

6.2 So the issue to be decided in the present appeal is:

(i) Whether the refund amount of Rs.1,89,035/- rejected vide the impugned order passed by the adjudicating authority, is proper or otherwise?


6.3 At the foremost, I observed that in the instant case the "impugned order" is of dated 17.08.2023 and the present appeal is filed online on 09.09.2023 and the documents along with appeal submitted is on 09.09.2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. I observed that in the instant case the appeal has been filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

6.4 I observe that the Appellant has filed a refund application dated 26.04.2023 for the Tax period July-2022 to September-2022 amounting to Rs.5,87,940/- in respect of export of goods/service without payment of tax (accumulated ITC) under RFD-01. The adjudicating authority found that GSTR-3B return for the period July-September-2022, total net ITC is Rs.5,87,683/-. As per Rule 89(4)(B) of the CGST Rules, 2017 "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-rules (4A) or (4B) or both.*"

6.5 Further, the adjudicating authority has sanctioned the refund considering the clarification in circular No. 170/02/2022-GST dated 06.07.2022, wherein it has been specifically mentioned that "*any reversal of ITC or any ITC which is ineligible under any provision of the CGST Act should not be part of Net ITC Available in Table 4(C) and accordingly, should not get credited into the ECL of the registered person.*"

6.6 I observe that the appellant has made zero rated supply on payment of IGST (Rs.13,13,63,977/- and zero rated supply on LUT of Rs.47,05,54,507/-). The appellant was eligible to claim refund u/s 54(3) of the CGST Act, 2017 read with Rule 89(4) of the CGST Rules, 2017 to the extent of zero rated supply made on LUT whereas as per 3<sup>rd</sup> proviso to section 54(3) of the CGST Act, the appellant is not eligible to seek refund on zero-rated supply made on payment of IGST. The appellant computed the refund proportionately to the extent of Zero-rated supply made on LUT which worked out to be Rs.5,87,940/- and reversed the balance non-refundable ITC (Cess) of Rs.2,78,236/- (Rs.8,66,176/- less Rs.5,87,940/-) attributable to zero-rated supply made on payment of IGST. Such suo moto reversal of IGST reflected in Table 4(B) of form GSTR-3B.

6.7 As per para 4.3 of the Circular170/02/2022-GST dated 06.07.2022, the Net ITC will be calculated in Table 4(C) which is as per formula (4A-(4B(1) + 4B (2))). The contention of the appellant is that the ITC attributable to zero-rated supply made on payment of IGST reflected in Table 4(B) has been deducted from the Net ITC. Had they not reversed the same, the NET ITC would have been calculated as Rs.8,66,176/- and the entire amount of Refund i.e. Rs.5,87,940/- would have been sanctioned to them.



For the above contention of the appellant, to decide whether the difference amount of non-refundable ITC (Cess) of Rs.2,78,236/- between GSTR-01 and GSTR-3B, which was due to the reversal of ITC related to zero rated supply made on payment of IGST, is admissible or otherwise, I refer Circular No. 45/19/2018-GST dated 30.05.2018, the relevant portion of which is reproduced here under:

*\*5.2 In this regard, section 16(2) of the Integrated Goods and Services Tax Act, 2017 (IGST Act for short) states that, subject to the provisions of section 17(5) of the CGST Act, credit of input tax may be availed for making zero rated supplies. Further, as per section 8 of the Goods and Services Tax (Compensation to States) Act, 2017, (hereafter referred to as the Cess Act), all goods and services specified in the Schedule to the Cess Act are leviable to cess under the Cess Act; and vide section 11 (2) of the Cess Act, section 16 of the IGST Act is mutatis mutandis made applicable to inter-State supplies of all such goods and services. Thus, it implies that all supplies of such goods and services are zero rated under the Cess Act. Moreover, as section 17(5) of the CGST Act does not restrict the availment of input tax credit of compensation cess on coal, it is clarified that a registered person making*

zero rated supply of aluminum products under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal.

5.3 Such registered persons may also make zero-rated supply of aluminum products on payment of integrated tax but they cannot utilize the credit of the compensation cess paid on coal for payment of integrated tax in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies. Accordingly, they cannot claim refund of compensation cess in case of zero-rated supply on payment of integrated tax.\*

6.9 From the above clarification it is crystal clear that a registered person cannot claim refund of compensation cess in case of zero-rated supply on payment of integrated tax.

6.10 Further, as per Circular No.170/02/2022-GST, dated 06.07.2022, it has been clarified as under:



6.11 It may be noted that the amount of Net ITC Available as per Table 4(C) of FORM GSTR-3B gets credited into the electronic credit ledger (ECL) of the registered person. Therefore, it is important that any reversal of ITC or any ITC which is ineligible under any provision of the CGST Act should not be part of Net ITC Available in Table 4(C) and accordingly, should not get credited into the ECL of the registered person.

6.11 From the co-joint reading of the above circulars, I observe that the refund of compensation cess on account of zero-rated supply on payment of IGST is not available to the Appellant and any reversal of ITC or any ITC which is ineligible under any provision of the CGST Act should not be part of Net ITC available in Table 4(C) of GSTR-3B. Therefore, I am of the view that the ITC availed/reversed on account of this, even if not reversed in GSTR 3-B, is to be deducted from Net ITC available for the purpose of calculation of refund in the present case.

6.12 Therefore, I find that reversal of ITC in respect of zero rated supply on payment of IGST, deducted from NET ITC (Cess), which otherwise is not eligible for refund under proviso 3 of Section 54(3) of the CGST Act, 2017, and refund rejected of Rs.1,89,035/- accordingly, by the adjudicating authority is proper and legal.

7. In view of the foregoing facts & discussion, I do not find any infirmity in the impugned order and the impugned order passed by the adjudicating authority is legal and proper and as per the provisions of law. Accordingly, I reject the present appeal of the "Appellant".

8. अपीलकर्ता द्वारा बर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeal filed by the Appellant Department stands disposed of in above terms.

*Adesh Kumar Jain*  
31/10/2023

(ADESH KUMAR JAIN)  
JOINT COMMISSIONER(APEALS)  
CGST & C.EX., AHMEDABAD.

Date: .10.2023.

Attested

*Sunita D. Nawani*  
(Sunita D.Nawani)  
Superintendent,  
CGST & C.Ex.,  
(Appeals), Ahmedabad



By R.P.A.D.

To:

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Block NO.780 and 780 A/P,  
Hindustan Gum and Chemicals Ltd,  
Ahmedabad-Virangam Highway, Jakhwada,  
Ahmedabad, Gujarat, 382150. (GSTIN 24AMCH7214E1Z3)

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
  2. The Commissioner, CGST & C.Ex., Appeals, Ahmedabad
  3. The Pr./Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
  4. The Additional Commissioner (Systems) CGST & C.Ex., Ahmedabad-North Commissionerate.
  5. The Dy./Assistant Commissioner, CGST & C.Ex., Division-III, Ahmedabad North Commissionerate,
  6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
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