

वायुक्तकाकार्यालय

Office of the Commissioner ইবাৰ বাহিন্দ্ৰ, ৰাখন জ্বল্যাৰ অনুভাৰ Central UST, Appeal Abmedade Commissionerate বাহনে বাহনে, বাহৰে আৰু, বাহনোৱাইব্লুমানাৰ ২০০ হ'ব, UST Bhavan, Revenue Marg, Ambassed, Abmedaded 380015 Phone: 079-26305065 Pax 079-26305136 E-Mail: commission I examidable in



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DIN NO.: 20231164SW000000D02F

	. NO.: 202311043W0000000002P				
(46)	फ़ाइल संख्या / Pile No.	GAPPL/ADC/GSTP/2836/2023 /6341 - An			
(ਬ)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-CGST-002-APP-JC-92/2023-24 and 31.10.2023			
(শ)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)			
(H)	जारी करने की दिनांक / Date of Issue	15.11.2023			
(8)	Arising out of Order-In-Original No. ZE2408230245576 dated 17.08.2023 passed by The Assistant Commissioner, CGST, Division-III, Ahmedabad North Commissionerate				
(ৰ)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Hindustan Gum & Chemicals Ltd (GSTIN: 24AAACH7214E1Z3), Block No. 780 and 780 A/P, Ahmedabad-Viramgam Highway, Jakhwada, Ahmedabad, Gujarat-382150			

(A)	इस अपेशावरीमा से व्यक्ति कोई व्यक्ति निस्त्रिष्ठित ठरिके में उपयुक्त शासिकारी /शासिकारम के समक्ष अपीस दायर कर सकता है Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(5)	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 COST Rules, 2017 and shall be companied 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-Fire Thousand.
(B)	Appeal under Section 112[1] of COST 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 AFL-05, on common portal as prescribed under Rule 110 of COST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing POVM GST AFL-05 conline.

Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying—

[] Pull amount of Tax, interest, Fine, Fee and Pensity arising from the impugned

Full amount of Tax. Interest. Fine. Rec and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and
 A sum equal to aventy five per cent of the remainingamount of Tax in dispute,

in a delition to the amount paid under Section 107(8) of OSTS Act, 2017, arising from the said order, in relation to which the appeal has been filled.

The Central Goods & Service Tax [Minth Removed of Difficulties] Order, 2019 dated [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

For elaborate, detailed and processor relating to filing of appeal to the appellate authority, the appellant may also be no network bic.gov.in.

ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE:

M/s. Hindustan Gum & Chemicals Ltd. (GSTIN 24AAACH7214E123), Block N0.780 and 780 A/P. Hindustan Gum And Chemicals Ltd. Ahmedabad-Virangam Highway, Jakhwada, Ahmedabad, Gujarat, 382150 [hereinafter referred to as the "Appellant"] has filed appeal Against OlO No. Zez2408230245578 dated 17-08-2023 issued by the Assistant Commissioner, CGST & C.Ex., Division III, Ahmedabad-North Commissionerate, Ahmedabad therein after referred as the "impussed order").

2. Brief facts of the case are that the Appellant registered under OSTIN 24AAACH7214E123 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 faccumulated ITCl under FORM-GST-REP.0-1. On preliminary secuting of the claims submitted by the applicant, certain discrepancies were noticed for which a Show Cause Notice No. ZMA40623048209 in FORM-GST-RFD-06 dated 23.06.2023 was issued to the claims submitted.

TIC in RFD-01 is mentioned as Rs. 866176/- whereas the same is found to s. 587683/- as per GSTR-3B of the claim period. Therefore, Rs. 587683/t 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	Adjusted	Net Input	Refund
	Zero rated	Total	Tax Credit	(Cess)
	supply	Turnover	(Cess)	
Asper RFD-	408567876	601918484	866176	587940
01				
GSTR-3B	-	-	587683	
Recalculated	408567876	601918484	587683	398905
Refund				
Claim				
Refund Claim I	189035			

- 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.
- 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. 34,313,292/during the relevant tax period. After reducing above reversed of ITCs) bolances Het ITC which worked out to be Rs. 56,6176/1Rs. 921,048/Less Rs. 54,872/1 is attributable to Zero Rated Supply made on LIT as considered out on payment of ISST. This amount is considered by appellant in its refund claim application.

- > As estated above, the appellant is engaged mainly in Zero rated Supply either made on LUT or on payment of JOST. As pro-54(8) of COST Act read with Rule 89(4), the appellant is engined to refund claim of untilitiest (TOCsate) to the extent of poro moted supply made on LUT whereas as per 3rd proviso to Sec. 54(8) of the COST Act, it is not eligible to seek Figlind on Zero Read supply made on payment of JOST.
- The appellant computed the refund proportionately to the extent of Zero-Rated supply made on LIT value of the last Set 1960. As 1960 of the research the bolance non-refundable ITC of of the 2,72,2001. On the 1960 of the 2,72,2001 of the 2,66,1761 the 25 58,78,9401 of thirthatelile to Zero-Stated supply made on payment of REST. Such aus moto reversal of ITC) least juxus reflected to Table 4810 of FORM GSTR 28.
- The Li. Assistant Commissioner portially rejected the claim on the ground that refund will be computed considering life IT Co. sper POSIG GSTR-39 and referred Circular No. 170/02/2022 GST dated 06.07.0022 witherink its written that any reversal of IT Cor on JIT Co within is inelligible more than the consistence of the CGST Act should not part of INST ITC. It seems from the writing of the LA assistant Commissioner than the has not read the entirety and the composition of the CGST and the commissioner than the has not read the entirety and the appellant not reversed the input tax credit (less) in the FORM
 - JSTR-3B, the Ld. Assistant Commissioner would have granted the refund as it was doing in the past. Merely reporting by the appellant reversal of TrC(cass) 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 Judipment passed by Honble Madras High Court in the case of ABL Technologies we. Asset. Commissioner of Ousbon, Tuttorin 1 2022 (6) G.S.T.L. 30 Madrasi Universit the Honble 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 held references.
 - the system. The relevant para 11 of observat for the sectionality twolved in the 11.1 is my view, the procedures used miles of one typus held reference—
 11.1 is my view, the procedures used miles of one of your held reference or applied strictly to dary legislance apport to executive that are convenient and executive that are convenient to the convenient and the section of the Horst-De Supreme Court in the cose of Commissioner of Soles Tax, UP. v. Auritya Chamber of Commissioner, Milesdand reported in 1986 23 \$12.7.8 of Co.C. I wherein the Horst-De Commission of Commissioner of Soles Tax, UP. v. Auritya Chamber of Commissioner of Soles Tax, UP. v. Auritya Chamber of Commissioner of Commissione

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 :

 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 wide 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 otder' is of dated 17.08.2023 and the present appeal is filled online on the 09.2023 and the documents along with appeal submitted is on 1909.2023. As per Section 107(1) of the COST Act, 2017, the appeal is equired to be filled within three months time limit. I observed that in the instant case the appeal has been filled within normal period prescribed under Section 107(1) of the COST 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 RR-8.57,940+1 respect of export of goods/service without payment of tax (accumulated ITC) under RFD-01. The adjudicating authority found that (SETK-83 return for the period July-September-2022, total net ITC is RR-8.57,683+. As per Rule 89(4)(B) of the COST 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 subrulas (84.04 ref.8) or both;
- 6.5 Further, the adjudicating authority has sanctioned the refund considering the clarification in circular No. 170/02/2022-GST dated 6507/2022, wherein it has been specifically mentioned that "any reversal of ICC or any ITC which is ineligible under any provision of the COST Act should not be part of Net ITC Available in Table 4(1) and accordingly, should not get orwited into the ECC of the resistence areaso."

- 6.6 I observe that the appellant has made zero rated supply on payment of IGST (Rs. 13, 13, 63, 9777)- and zero rated supply on LUT of Rs. 47, 05, 54, 507/4. The appellant was eligible to claim refund u/s \$461/80] 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 3rd provise 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. These ppellant computed the refund proportionately to the the extent of Zero-rated supply made on LUT which worked out to be \$6.58/7.940 and reversed the balance non-refundable ITC (Cess) of Rs. 2/Rs. 266-(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-3.8.
- 6.7 As per para 4.3 of the Circular170/02/2022-GST dated 06.07.2022, the Net TC will be calculated in Table 4(C) which is as per formula (44-4811) + 48 (20)). The contention of the appellant is that the ITC attributable to zerrated 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.

Tor the above contention of the appellant, to decide whether the difference amount of non-refundable ITC (Coss) of Rs.2,78,236/. between the following the content of Rs.2,78,236/. between the cont

"S.2 In this regard, section 16(2) of the Integrated Goods and Services
Tax Act, 2017 (IGST Act for shortjeates that, subject to the provisions of
section 17(5) of the CAST 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, thereafter 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 ther-State
supplies of all such goods and services. True, 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 atuminum products on payment of integrated tax but they cannot utilise the credit of the compensation esses paid on coal for payment of integrated tax in view of the provise 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 alain 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:
- R it may be noted that the amount of Net ITC Available on per Table 4(f) of FORM IS 8 gifts eventiled into the electronic oradit ledger (BCL) of the registered IS 1 months of the CST and the registered in the second of TeC oran ITC which is indicable and a mornishm of the CST det should not be part of the ITC Available in Table Can and accordinate, should not see exercised into the ECC or not increase.
- 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 Cowhich is ineligible under any provision of the CGST Act should not be part of White ITC available in Table 4(c) of GSTR-3B. Therefore, I am of the view that the ITC available (freversed on account of this, even if not reversed in GSTR-3-3, 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 provise 3 of Section 54(3) of the CoST 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 "Appellan".

- अपीलकर्ता द्वारा वर्ज 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) JOINT COMMISSIONER/APPEALS CGST & C.EX., AHMEDABAD.

Date: .10.2023,

Attested

watrani (Stinita D.Nawani) Superintendent. CGST & C.Ex.. (Appeals), Ahmedabad

By R.P.A.D. To:

M/s. Hindustan Gum & Chemicals Ltd.. Block NO.780 and 780 A/P.

Hindustan Gum and Chemicals Ltd.

Ahmedabad-Viramgam Highway, Jakhwada,

Ahmedabad, Gujarat, 382150. (GSTIN 24AMCH7214EIZ3)

Copy to:

- 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. The Dy./Assistant Commissioner, CGST & C.Ex., Division-III, Ahmedabad
- North Commissionerate. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
- Guard File/ P.A. File.







