

आयुक्तकाकार्यालय Office of the Commissioner केंद्रीय जीएसटी, अपील अहमदाबाद आयक्तासब Central GST, Appeal Ahmedabad Commissionerate जीएसटी भवन, राजस्व मार्ग, अम्बावाहीअहमदाबाद३८००१५. GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015 Phone: 079-26305065 Fax: 079-26305136 E-Mail: commrappl1-cexamd@nic.in



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(%)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2838/2023 / \$3r5 -6 (
(W)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-CGST-002-APP-JC-93/2023-24 and 31.10.2023
(শ)	पारित किया गया /. Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(ঘ)	जारी करने की दिनांक / Date of Issue	15.11.2023
(8)	Arising out of Order-In-Original No. ZE2408230268601 dated 18.08.2023 passed by The Assistant Commissioner, CGST, Division-III, Ahmedabad North Commissionerate	
(14)	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)	सकता है।	निम्नलिकित वरीके में उपयुक्त प्राधिकारी /बाक्षिकरण के समझ अपील दायर क : Order-in-Appeal may file an appeal to the appropriate
(i)	National Bench or Regional Bench of Appellate Tribunal framed under OST Act/COST Act in the cases where one of the Issues involved relates to place of supply as per Section 1000 pt. COST Act OST Act	

	इस आदेश(अपीश) से व्यथित कोई व्यक्ति निस्नलिबित तरीके में उपयुक्त प्राधिकारी /प्राधिकरण के समक्ष अपील दावर कर
(A)	सकता है।
1 4 4	Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate
\perp	authority in the following way.
1 1	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act
(i)	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
444	than as mentioned in para- [A](i) above in terms of Section 109(7) of CGST Act, 2017
	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
1 1	involved or the amount of fine, fee or penalty determined in the order appealed against,
	subject to a maximum of Rs. Twenty-Pive Thousand.
1 1	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.
(B)	with resevant 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.
	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017
	after paying -
	 Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned
(6)	order, as is admitted/accepted by the appellant; and
	 A sum equal to twenty five per cent of the remaining amount of Tax in dispute,
1 1	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.
1 1	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
1 1	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.
1 1	उञ्ज अपीत्रीय प्राधिकारी को अपील दाखिल क्रुपुँक्तिक्संबिद्धकुन्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीतार्थी
l l	For elaborate, detailed and large properties elating to filing of appeal to the appellate
(C)	For elaborate, detailed and latery promisions relating to filing of appeal to the appellate
1 1	authority, the appellant may receipt to the webs tewww.cbic.gov.in.

ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE:

M/s. Hindustan Gum & Chemicals Ltd. (GSTIN 24AAACH7214E123), Block NO.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.ZE24069330368601 dated 18-08-2023 issued by the Assistant Commissioner, CGST & C.Ex., Division III, Ahmedabad-North Commissionerate, Ahmedabad (herein after referred as the "impuganed order").

- 2. Brief facts of the case are that the Appellant registered under OSTIN 24AAACH7214B123 filed a refund application dated 27.08.2022 for the superiod AFRIL-2022 TO JUNE-2022 Re.5,57,256/- respect of export of goods/service without payment of tax (securanilated ITC) under FORM-OSTINEPD-01. Further, during the processing of the refund claim a SC NW was issued to adjudicating authority to the claimant vide SCN NO 252409220345293 and 28.09.2022 and personal hearing was fixed on 06.10.2022 which was attended by the claimant. In the SCN, the claimant was called upon to above cause as to why refund claim of Re.5,57,256/- should not be rejected use following observation made during the verification of refund claim:
- a) Net Input Tax Credit is mentioned as Rs. 2,98,28,699/- in RFD-01, whereas the same is found to be Rs. 2,75,23,463/- in the GSTR-3B for the claim period.
- b) Further, Net input tax credit of CESS is mention of Rs 10,31,204/- in RFD-01 whereas the same is found negative to be Rs. -12,74,032/- in the GSTR-3B for the claim period.
- c) Apart from the above, claimant has also failed to upload Undertaking as per Notification No. 16/2020-Central Tax dated 23.03.2020 regarding nonreceipt of foreign remittance.
- d) Further, as per the Annexure B statement wherein claimant is mentioned pending ITC of Jan-22 Feb-22 & Mar-22 taken in APR-22 & JUN-22 of ITC tune to Rs 5,29,815/- whereas not mentioned of Invoice number and date.
- 3. The adjudicating authority vide the impugned order, rejected the refund claim of Rs.6,57,256/- filed by the appellant.
- Being aggrieved with the impugned order, the Appellant filed the present appeal on 15.09.2023 on the grounds that:

(i) The adjudicating authority viite the impugned order found that GSTR-38 return for the period April-2022 to June-2022, total net ITC is Rs-2,75,24-60/, and Het ITC of Geas is Rs (4),127,45,027. As per Rule 38/4||0|) of the CGST Rules, 2017 "Net TC" means input tax credit availed on tiputs and input services advang the relevant period other than the biput tax credit availed for which refund to claimed under sub-rules (44) or (45) or both;"

Further, the adjudicating authority has mentioned the clarification issued vide circular No. 170/02/2022-GST dated 06.07.2022, wherein it has been specifically mentioned that "only reversal of ITC or any ITC which is ineligible under any provision of the COST act should not be part of Net ITC.

The Appellant availed Input tax credit (Cess) to the tune of Rs.10,31,2267-during Apr-22 to Jun-22 and declared the same in Table 4A of GSTR-3B.

During the period April22. Ann'23. The Appellant Suo more reversed accumulated input fac credit input for each great source. The 13,31,585/- which is being carry forwarded from past tax periodes of Pie. 13,31,585/- which is being carry forwarded from past tax periodes of all parties to Zero Rated Supply Mode on payment of ISST during the period Aprilon to Zero Rated Supply Mode on payment of ISST during the period Aprilon 10 Zero Rated Supply Mode ackared in Table 48 of GIRS, 28. This reversal turn 122. Both reversals were was ineligible or same was required to be reversed until drane because same was ineligible or same was required to be reversed until control & Services STA AC ICOST Or Central Cools & Services STA AC ICOST Or Central Cools & Services STA AC ICOST Or Central Cools & Services defeated of the period and the period to which it person and the period to which it period to which it person and the period to which it period to wh

As stated above, the appellant is engaged mainly in Zero rated Supply either made on LUT re in payment of IGET. Since there is no case letable on its outcomed supply, and hence for IGET since there is no case letable on its outcomed supply, and hence if the since it first payed no accumulating. To life the refund claim under Sec. 54(3) of COS(case), the appellant use 69(4) specific allows refund of input to according to the refund rate of Service allows refund of put to credit (sees) but not of Zero-Vator Service allows results and the refund results and the service of the s

Sportmann regulary.

Figure and the CSST Act, the refund of unutilized input fax credit (ease) on Zero rated supply made on the payment of ISST is not allowable and hence the proportionate amount of input tax credit (ease) and accumulating. The appellant through it product to reverse losses keeps on accumulating. The appellant through it product to reverse as some is neithful though it product to reverse as some is neithful through it products to reverse the sum of the content of ISST and hence as on motor reversed such accumulated.

input tax credit (coss) during Apr 22-Jun 22 in Table 4(8) of FORM GSTR-3B. Had the appellant not reversed the input tax credit (coss) in the FORM GSTR-3B, the LA Assistant Commissioner would have granted the refund as it was doing in the post. Merely reporting by the appellant reversal of accumulated & carry forwarded FICoss) in Table 4(8) of FORM GSTR-3B, led the Ld. Assistant Commissioner to reject the refund which otherwise unresellables.

The appellant would like to draw your Honour's kind attention towards a Judgment passed by Hon'ble Hadras High Court in the case of ABL Technologies ex. Astt. Commissioner of Custom, Tutiorin [2022 (65) G.S.T.L. 30) Madrad Wherein the Hon'ble High Court held that refund, which would orbavise psyable, should not be held for the technicality involuted in the system. The relevant para 11 of above order for your kind references. It is my eleven the proceedings under Kind 96 of COST Rules, 2017 cannot not supplement the system.

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 Hanthis Expreme Court in the case of Commissioner of Sales Tax, UP: v. Auriaya Chamber of Commerce, Allahabad reported in 1986 25] ELT. 867 (S.C.), wherein the Hon'ble Supreme Court heal that procedures are nothing but handmadis of justice and not mistress of law. In my view, 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.

- (II) as per para 37 of CBIC Circular No.125/44/2019-GST dated 18.11.2019 the appellant are not entitled for refund as the least of the following amount is Rs.0/
 - a) The maximum refund amount as per the formula in rule 89(4) of the CGST Rules - Rs.657256/-.
 - b) The balance in the electronic credit ledger at the end of the Jun'22 Rs. 657553/-.
 - c) The balance in the electronic credit ledger of the applicant at the time of filing the refund application - Rs. 1078281/-.
- the formula given in Rule 89(4) for computing Refund of input tax credit Turnover of Zero-Rated Sumby of Goods/Service

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Adjusted Turnover

- As per Pana 4 of Circular No. 170/02/2022 dated 0.607.0022, front two credit consides by Registered Person will be fetched automatically from GSTR-28 though editable. Housever, the registered person is required to reverse the proportionate input tax credit so auxiled if Rule 38, Rule 49, Sec. 176/19, Sec. 167/19/0, Sec. 167/19/0, Sec. 167/19/0 and Rule 37 are applicable to it during the relevant tax period. In other words, NET ITC means injute tax credit usedied on the basis of GSTR-28 of relevant tax period is reversed of input tax credit so availed if above rule or section applies.

 It is also a settle law that tryat tax credit reversed object will be also the section of the section of
- treated as input tax restli not availed. Some is also stated by CBIC at Para 43 clause Co JR in Circular In 1.054/4/2019 CBI and 18.1.1.2010 wherein it is stated by CBIC that ITO which is reversed control to held to have been vascised to the reliance preside. CBIC countifying that greatered Person availed Goes of 8s. 1001-in a tax period and ast of it reverse Re. 501-in that period on account of non-zero-rated supply them such reversed input its credit control to part of refund of wuxtilland ITC on account of zero-rated supplies.
- Your Honour, the appellant has not reversed any input tax creditional out of the input tax credit (loss) available by it during the relevant tax period Apr²²— Jun²² which is required to be done as per any provision of the COST Add Rules and same is also exident from GSTR-3B as the appellant reversed a sum of Rs. 230,5328³. Unwherea it has taken input tax credit of Rs. 10,31,296³. Had the appellant reversed any of the input tax credit availed during the relevant period Apr²²—Jun²², such reversal cannot by any

stretch of imagination would be more than input tax credit so availed during

The Ld. Adjudicating Officer computed Refund amount wrongly by treating Net ITC as Rs. 0/- whereas refund should have been computed considering Net ITC Rs. 10,31,296/- which is availed by the appellant during the relevant period Apr'22-Jun'22.

Had the Ld. Assistant Commissioner considered Net ITC as Rs. 10,31,296/. the maximum refund amount as per the formula in rule 89(4) of CGST Rule would be Rs. 6.57,256/- as claimed by the appellant.

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

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. He submitted that they were having sufficient balance in ITC Credit Ledger & Refund amount was reversed at the time of filing RFD-01.As regards the negative value in GSTR-3B, there is no column which can show carried forward balance. This has been clarified vide various circulars which allows them for refund. He further requested a week's time to submit additional submissions on the points explained during P.H. He further submitted that they do not require further P.H. and requested to allow the nbeal.

request for submission of further submissions was accepted. The sellant submitted further submissions on 23.10.2023.

6 Discussion and Findings:

- I have carefully gone through the facts of the case and the submissions made by the Appellant in their grounds of appeal as well as further submissions submitted and observe that the Appellant is mainly contesting with the amount of Net Input Tax Credit of compensation Cess which as per the GSTR-3B is Rs.(-)12,74,032/- and due to which the adjudicating authority rejected the Refund applied for by the appellant of Rs.6,57,256/- for the period April-2022 to June-2022.
- 6.2 So the issue to be decided in the present appeal is: (i) Whether the refund amount of Rs.6,57,256/- 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 18.08.2023 and the present appeal is filed online on 15.09.2023 and the documents along with appeal submitted is on

22.09.2033. As per Section 107(1) of the COST Act, 2017, the appeal is required to be filled within three months time limit. I observed that in the instant case the appeal has been filled within normal period preserbed 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

27.08.2022 for the Tax period April-2022 to June-2022 amounting to Ra.6,57.256/- in respect of export of goods/service without payment of tax (accumulated ITC) under RPD-01. The adjudicating authority, whe the 600 dated 14.10.2022, after the appellant did not appear for personal hearing on 06.10.2022, rejected the refund application filed by the appellant perferred appeal before the appellant emitority. The appellant authority vide OIA No.AHM-COST-002-AFP-ADC-166/2022-23 dated 16.03.2023, directed the adjudicating authority to process the refund application of the appellant by following the principle of natural justice. The appellant was also directed to submit all the relevant documents with classification vide ARN AA240423071998U dated 18.04.2023. The adjudicating untirely wide the impugned order found that CSTR-SB return for the period period order found that CSTR-SB return for the period period order found that CSTR-SB return for the period period order found that CSTR-SB return for the period period order found that CSTR-SB return for the period period order found that CSTR-SB return for the period period order found that CSTR-SB return for the period period order found that CSTR-SB return for the period period order found that CSTR-SB return for the period period order found that CSTR-SB return for the period period order found that CSTR-SB return for the period period order found that CSTR-SB return for the period period order found that CSTR-SB return for the period p

2 mess is Rs.(-)12,74,032/-. 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 (44) or (4B) or both."

6.5 Further, the adjudicating authority has mentioned the clarification issued vide circular No. 170/02/2022-OST dated 06.07.2022, wherein it has been specifically mentioned that "any reversal of ITC or any ITC which is inaligible under any provision of the COST 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." Purther, as per para 37 of CBIC Circular No.125/4/2019-OST dated 18.11.2019 the appellant are not entitled for retunds as the least of the following mounts is Ra.O.*

a) The maximum refund amount as per the formula in rule 89(4) of the CGST Rules - Rs.0/- as net ITC is negative.

b) The balance in the electronic credit ledger at the end of tax period for which the refund claim is being filed after the return in Form GSTR-3B for the end of June-2022 - Rs.6.57.553/-.

c) The balance in the electronic credit ledger of the applicant at the time of filling the refund application - Rs. 10,78,281/-. Therefore the refund claim of Rs.6,57,256/- filed by the appellant was rejected by the appellant.

- 6.6 I observe that the appellant suomoto reversed accumulated ITC (Cess) for Rs. 19,31,855/- which is being carried forwarded from the past tax periods and also suo moto reversed ITC (Cess) for Rs. 3,73,743/- which is in proportion of zero rated supply made on payment of IGST during April to June-2022. This reversal was not done because the same was ineligible or same was required to be reversed under any provisions of the CGST Act or Rules. To claim the refund of unutilized credit of cess, which keeps on accumulating due to supply either made on LUT or on payment of IGST, the appellant claims refund. As per proviso to Sec 54(3) of the CGST Act, 2017, the refund of unutilized TTC (Cess) on zero rated supply made on the payment of IGST is not allowable and hence the proportionate amount of ITC keeps on accumulating. The appellant reversed such credit of cess during April-2022 to June-2022, which was not required under any of the provisions of the CGST Act or Rules, 2017.
- 6.7 I also observe that Appellant had availed ITC of Cess during the period April-June-2022 of Re-10,31,396/. They further reversed a sum of Rs.19,31,885/. [of Past period cess) and Rs.2,73,743/- [ITC proportion of cross rated supply on payment of IGST of April-June-22) which turned the salance of ITC of Cess in (minus)Rs.12,74,032/-. However, I observe that versals of ITC cannot be more than the ITC availed during the relevant period.
- 6.8 I, further observe that the adjudicating authority computed Refund as zero (0) as NET ITC as per above calculation is negative.
- 6.9 From the above, I find that the issue of negative Net ITC has arisen out of the reversal of past accumulated credit of Cess and the proportion of zero rated supply on payment of 10'GPT by the appellant during the period April-June-2022 which has resulted in zero refund. So far as the ITC of Cess reversed of Ra.3/73,474/- which pertains to proportion of zero rated supply on payment of 10'ST during the period April-June-2022, I find that the same is rightly deducted from the total ITC availed during the said period. Therefore, I am of the view that Ra.5(5)'5S3/- (Rs.10.31.956)- minus Ra.3/3.743/-) is the eligible amount of refund for the period April to June-2022 subject to the securacy of the same as per relevant period Returns/records. The legitimate right of refund under the provisions of the Act and Rules made there under, cannot be denied to the Appellant due to suo moto reversal of the past period of ITC (cess) from the ITC (Cess) of the

relevant period for which the claim is made. As per my view this is only technical issue, which should not hinder the process of Refund, if otherwise admissible.

- 7. In view of the foregoing facts and discussions, the adjudicating authority is directed to re-compute the refund on the basis of TIC (Dess) availed during the period April to June-2022 and reversed by the Appellant for the period April-June-2022, as per the records, and pass order accordingly.
- अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
- 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

(Sunita 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.
 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.

7. Guard File/ P.A. File.

