

ORDER-IN-APPEALBRIEF 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-Viramgam Highway, Jakhwada, Ahmedabad, Gujarat, 382150 (hereinafter referred to as the "Appellant") has filed appeal Against OIO No.ZE2408230268601 dated 18-08-2023 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 24AAACH7214E123 filed a refund application dated 27.08.2022 for the tax period **APRIL-2022 TO JUNE-2022** Rs.6,57,256/- respect of export of goods/service without payment of tax (accumulated ITC) under FORM-GST-RFD-01. Further, during the processing of the refund claim a SCN was issued by the adjudicating authority to the claimant vide SCN No ZE2409220345289 dated 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 show cause as to why refund claim of Rs.6,57,256/- should not be rejected due to 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 non-receipt 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.

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

(i) The adjudicating authority vide the impugned order found that GSTR-3B return for the period April-2022 to June-2022, total net ITC is Rs.2,75,23,463/- and Net ITC of Cess 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 (4A) or (4B) 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 "any reversal of ITC or any ITC which is ineligible under any provision of the CGST Act should not be part of Net ITC."

➤ The Appellant availed Input tax credit (Cess) to the tune of Rs.10,31,296/- during Apr-22 to Jun-22 and declared the same in Table 4A of GSTR-3B.

➤ During the period Apr'22- Jun'22, the Appellant Suo moto reversed accumulated input tax credit (Cess) for Rs. 19,31,585/- which is being carry forwarded from past tax periods and also suo moto reversed input tax credit (cess) for Rs. 3,73,743/- which is in proportion to Zero Rated Supply Made on payment of IGST during the period Apr'22-Jun'22. Both reversals were declared in Table 4B of GTR-3B. This reversal was not done because same was ineligible or same was required to be reversed under any provisions of the Central Goods & Services Tax Act (CGST) or Central Goods & Services Tax Rules (CGST Rules). A statement is attached herewith which depicts the details of reversal and the period to which it pertains.

➤ As stated above, the appellant is engaged mainly in Zero rated Supply either made on LUT or on payment of IGST. Since there is no cess leviable on its outward supply, and hence input tax credit (cess) keep on accumulating. To claim the refund of such unutilized input x credit (cess), the appellant use to file the refund claim under Sec. 54(3) of CGST Act read with Rule 89(4) which allows refund of input tax credit (cess) to the extent of Zero-Rated supply made on LUT. The appellant was also getting the refund from GST department regularly.

As per 3 proviso to Sec. 54(3) of the CGST Act, the refund of unutilized input tax credit (cess) on Zero rated supply made on the payment of IGST is not allowable and hence the proportionate amount of input tax credit (cess) keeps on accumulating. The appellant thought it prudent to reverse such accumulated cess as same is neither refundable as per Sec. 54(3) nor can be utilized for payment of GST and hence suo moto reversed such accumulated input tax credit (cess) during Apr'22- Jun'22 in Table 4(B) of FORM GSTR-3B.

➤ 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 accumulated & carry forwarded ITC(cess) in Table 4(B) of FORM GSTR-3B, led the Ld. Assistant Commissioner to 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) EL.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.

(iii) 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 Supply of Goods/Service

Refund ----- x Net ITC

Adjusted Turnover

As per Para 4 of Circular No. 170/02/2022 dated 06.07.2022, Input tax credit availed by Registered Person will be fetched automatically from GSTR-28 though editable. However, the registered person is required to reverse the proportionate input tax credit so availed if Rule 38, Rule 42, Rule 43, Sec. 17(5), Sec. 16(2)(b), Sec. 16(2)(c) 0 and Rule 37 are applicable to it during the relevant tax period. In other words, NET ITC means Input tax credit availed on the basis of GSTR-28 of relevant tax period less reversal of input tax credit so availed if above rule or section applies.

- It is also a settle law that input tax credit reversed before utilization will be treated as input tax credit not availed. Same is also stated by CBIC at Para 43 clause C of Its Circular No. 125/44/2019 - GST ated 18.11.2019 wherein it is stated by CBIC that ITC which is reversed cannot be held to have been 'availed' in the relevant period. CBIC exemplified that if registered Person availed Gess of Rs. 100/- in a tax period and out of it-reverse Rs. 50/- in that period on account of non-zero-rated supply then such reversed input tax credit cannot be part of refund of unutilized ITC on account of zero-rated supplies.
- Your Honour, the appellant has not reversed any input tax credit(cess) out of the input tax credit (cess) availed by it during the relevant tax period Apr'22-Jun'22 which is required to be done as per any provision of the CGST Act/Rules and same is also evident from GSTR-3B as the appellant reversed a sum of Rs. 23,05,328/- whereas it has taken input tax credit of Rs. 10,31,296/-. Had the appellant reversed any of the input tax credit availed during the relevant period Apr'22- Jun'22, such reversal cannot by any

stretch of imagination would be more than input tax credit so availed during the relevant tax period.

- 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 O-I-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. 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 appeal.

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

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 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

22.09.2023. 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 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 RFD-01. The adjudicating authority, vide the OIO 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. Being aggrieved the appellant preferred appeal before the appellate authority. The appellate authority vide OIA No.AHM-CGST-002-APP-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/submissions before the adjudicating authority. The appellant filed the refund application vide ARN AA240423071998U dated 18.04.2023. The adjudicating authority vide the impugned order found that GSTR-3B return for the period April-2022 to June-2022, total net ITC is Rs.2,75,23,463/- and Net ITC of Appellant 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 (4A) or (4B) or both*."

6.5 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 "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." Further, 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.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 filing 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 suo moto reversed accumulated ITC (Cess) for Rs. 19,31,585/- 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 ITC (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 Rs.10,31,296/-, They further reversed a sum of Rs.19,31,585/- (of Past period cess) and Rs.3,73,743/- (ITC proportion of zero rated supply on payment of IGST of April-June-22) which turned the balance of ITC of Cess in (minus)Rs.12,74,032/-. However, I observe that reversal 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 IGST by the appellant during the period April-June-2022 which has resulted in zero refund. So far as the ITC of Cess reversed of Rs.3,73,743/- which pertains to proportion of zero rated supply on payment of IGST 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 Rs.6,57,553/- (Rs.10,31,296/- minus Rs.3,73,743/-) is the eligible amount of refund for the period April to June-2022 subject to the accuracy 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 ITC (Cess) 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.

8. अपीलकर्ता द्वारा दर्ज 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.

(Signature)
21/10/2023

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

Date: .10.2023.

Attested

(Signature)
(Sunjiv 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-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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