



आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
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By speed Post

क फाइल संख्या : File No : V2(GST)36&37/EA2/North/Appeals/2018-19 | 10612 to 10617

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-002-APP-240 & 241-18-19

दिनांक Date : 29/03/2019 जारी करने की तारीख Date of Issue:

16/05/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग _____ आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनांक : से सृजित

Arising out of Order-in-Original: Div/GST-Refund/50/Final/Hi-Tech/2018, Date: 12/07/2018 Issued by: Deputy Commissioner, CGST, Div: VII, Ahmedabad North.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Hi-Tech Solutions LLP

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- ए0बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।



One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores, Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER IN APPEAL

The below mentioned two departmental appeals have been filed by Assistant Commissioner, Division VII, CGST & Central Excise, Ahmedabad North Commissionerate, [for short -'adjudicating authority'] under Section 107 of the Central Goods and Services Tax Act, 2017, the details of which are as follows:

Sr. No.	Name of the respondent	OIO No. & date issued under Form GST RFD 06	Review Order No. passed by the Pr. Commissioner, CGST & C.Ex., Ahmedabad North Comm'rate [in terms of Section 107(2) of the CGST Act, 2017]	Appeal No.
1	M/s. Hi-Tech iSolutions LLP, Hi-Tech House, B/h V-Murti	Div-VII/GST-Refund/50/final/Hi-Tech/2018 dated 12.07.2018	50/2018-19 dtd 18.01.2019	V2(GST)36/EA-2/North/Appeals/18-19
2	Complex, Gurukul Road, Memnagar, Ahmedabad.	Div-VII/GST-Refund/51/final/Hi-Tech/2018 dated 12.07.2018	51/2018-19 dtd 07.01.2019	V2(GST)37/EA-2/North/Appeals/18-19

2. Briefly, the facts of the case are that the respondent filed two refund claims for the months of August, September 2017, seeking refund of Input Tax Credit lying unutilized on account of zero rated supplies, made without payment of tax, in terms of Section 54 of the Central Goods and Services Tax Act, 2017 read with Rule 89 of the Central Goods and Service Tax Rules, 2017. The adjudicating authority, vide his impugned OIO, partly sanctioned the refund claims.

3. On the refund claims being sent for post audit, it was observed that the respondent has simply taken value of their adjusted turnover, for the month August & September-2017, towards their *turnover of zero rated supply of services* whereas, in many cases, its payments in foreign currency was not received during the relevant period. Hence, audit observed that the adjudicating authority had sanctioned the refund claims, in excess. Thereafter on the impugned OIOs, having been examined for its legality and propriety, the Pr. Commissioner, CGST & C.Ex., North Commissionerate, vide his aforementioned Review Orders, directed the adjudicating authority to file the aforementioned appeals raising the following grounds:

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- that the respondent in their GST RFD 01A had shown Rs. 4,95,06,315/- as turnover of zero rated supply of goods while on scrutinizing the documents it was observed that the correct amount is Rs. 4,68,35,713/- only; that the respondent vide his letter dated 7.1.2019 had also stated that their correct turnover of zero rated supply of goods was Rs. 4,68,35,713/-;
- that by considering the correct amount towards turnover of zero rated supply of goods the eligible refund is Rs. 5,98,919/- towards IGST, Rs. 9,71,180/- towards CGST and Rs. 9,71,180/- towards SGST;
- that the adjudicating authority erred in sanctioning refund of Rs. 6,33,070/- towards IGST, Rs. 10,26,557/- towards CGST and Rs. 10,26,557/- towards SGST;
- that the excess refund sanctioned of Rs. 34,151/- for IGST, Rs. 55,377/- for CGST and Rs. 55,377/- towards SGST which needs to be recovered along with interest.



September 2017

- that the respondent in their GST RFD 01A had shown Rs. 5,43,17,558/- as turnover of zero rated supply of goods while on scrutinizing the documents it was noticed that the correct amount was Rs. 4,74,98,714/- only; that the respondent vide his letter dated 7.1.2019 had also stated that their correct turnover of zero rated supply of goods was Rs. 4,74,98,714/-;
 - that by considering the correct amount towards turnover of zero rated supply of goods the eligible refund is Rs. 8,44,837/- towards IGST, Rs. 13,83,370/- towards CGST and Rs. 13,83,370/- towards SGST;
 - that the adjudicating authority erred in sanctioning refund of Rs. 9,66,121/- towards IGST, Rs. 15,81,964/- towards CGST and Rs. 15,81,964/- towards SGST;
 - that the excess refund sanctioned of Rs. 1,21,284/- for IGST, Rs. 1,98,594/- for CGST and Rs. 1,98,594/- towards SGST which needs to be recovered along with interest.
4. The respondent vide his cross objections dated 27.02.2019, submitted the following
- that they are an 100% EOU engaged in supplying Information Technology and IT enabled services; that they were making zero rated supply of services without payment of IGST under Letter of Undertaking and hence as per provision of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017, they are eligible to claim a refund of Input Tax Credit(ITC);
 - that in terms of Rule 89(4)(D) of the CGST Rules, 2017, the turnover of zero rated supply of services is based on the payment received and not on the basis of amount billed;
 - that GST being a new law and highly technical subject, they were not aware about the above determination of turnover of zero rated supply of services and while filing refund claim they have calculated the amount based on total turnover instead of turnover of zero rated supply of services as defined in rule 89(4);
 - that there is a small correction required in the amount demanded in the review order; that in respect of August 2017, the claim was of Rs. 2686184/- while the amount sanctioned was only Rs. 2500444/-; that this fact is ignored in the departmental appeal; that their actual liability is only Rs. 134885/- and not Rs. 144905/-;
 - that there is a small correction required in the amount demanded in the review order; that in respect of September 2017, the initial claim was of Rs. 41,30,049/- but the amount sanctioned was only Rs. 4111819/-; that this fact is ignored in the departmental appeal; that their actual liability is only Rs. 5,16,181/- and not Rs. 5,18,472/-.
5. Personal hearing in respect of both the appeals was held on 06.03.2019, wherein Shri Punit Prajapati, Chartered Accountant, and Shri Virendrasir L Chavda, Sr. Executive and Shri Kaushal Patel, Manager, of the respondent appeared before me and explained his case. The learned CA further stated that an amount of Rs. 18230/- was already reduced therefore their liability will also be reduced.
6. I have gone through the facts of the case, the impugned original orders, the grounds raised in the review orders mentioned *supra* and the cross objections filed by the respondent and the oral averments raised during the course of personal hearing. I find that the only question to be decided is whether the refund granted to the respondent vide the impugned OIO, is erroneous or otherwise.
7. The matter deals with refund of unutilized input tax credit, and therefore before moving forward, let me first reproduce the relevant rules which enables a person to seek refund of tax in such a situation, viz.



RULE 89. Application for refund of tax, interest, penalty, fees or any other amount.

[(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 the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula -

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

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-rules (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 of undertaking, other than the turnover of supplies in respect of which refund is claimed under sub-rules (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 of 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.]

(F) "Relevant period" means the period for which the claim has been filed.

8. I have carefully gone through the facts of the case the grounds raised in the review order, the cross objection filed by the respondent and oral submission made during the course of personal hearing. The primary ground raised by the department in the review order is that the respondent wrongly arrived at the value of 'turnover of zero rated supply of services'. In-fact in the review order itself in para 9, it is stated that the respondent has also vide his letter dated 7.1.2019, agreed with the departmental computation of the total turnover of zero rated supply of services for the months August and September 2017.

9. The respondent, therefore is not contesting the review order on merits. His only plea before me is that the reduction of claim in respect of August 2017 by Rs. 1,85,741/- and Rs. 18,230/- for September 2017 should have been considered while reworking the eligible refund by the department.

10. For August 2017, the review order in para 9 states that the adjudicating authority has sanctioned Rs. 6,33,070/- towards IGST, Rs. 10,26,557/- towards CGST and Rs. 10,26,557/- towards SGST [total Rs. 26,86,184/-]. However, on going through the GST RFD-06, [impugned OIO dated 12.7.2018], I find that the respondent has been sanctioned only Rs. 6,33,070/- towards IGST, Rs. 9,33,686/-



towards CGST and Rs. 9,33,686/- towards SGST [**total Rs. 25,00,442/-**]. The review order in para 9 further states that the respondent is eligible for refund of Rs. 5,98,919/- towards IGST, Rs. 9,71,180/- towards CGST and Rs. 9,71,180/- towards SGST [**total Rs. 25,41,279/-**]. This stands contested by the respondent who states that they are eligible for refund of Rs. 5,98,919 towards IGST, Rs. 8,83,319/- towards CGST and Rs. 8,83,319 towards SGST [**total Rs. 23,65,557/-**]. Let me verify the facts, viz.

Table A	Table B
<p>As calculated in the Review Order</p> <p>Turnover of zero-rated supply of services =Rs. 46835713/- Net ITC = Rs. 2686184 Adjusted Total Turnover = Rs. 49506315</p> <p>Formulae Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover</p> <p>=46835713*2686184/49506315 =Rs. 25,41,278/-</p> <p>Eligible Refund as per the review order = Rs. 25,41,278/-.</p>	<p>As calculated by the respondent</p> <p>Turnover of zero-rated supply of services =Rs. 46835713/- Net ITC = Rs. 2500442[2686184(-)185742] Rs. 185742/- refund claim withdrawn as per RFD-06 Adjusted Total Turnover = Rs. 49506315</p> <p>Formulae Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover</p> <p>=46835713*2500442/49506315 =Rs. 23,65,556/-</p> <p>Eligible Refund as per the review order = Rs. 23,65,556/-.</p>

The departmental review has ignored the fact that Rs. 185742/- refund claim was withdrawn by the respondent as they were not eligible for ITC in respect of this amount. The contention of the respondent is correct to this extent. So the erroneous refund amount needs to be worked out, viz.

Table C

	IGST	CGST	SGST	Total
Sanctioned vide the impugned OIO	633070	933686	933686	2500442
Eligible amount	598918	883319	883319	2365556
Erroneous refund	34152	50367	50367	134886

11. For September 2017, the review order in para 9 states that the adjudicating authority has sanctioned Rs. 9,66,121/- towards IGST, Rs. 15,81,964/- towards CGST and Rs. 15,81,964/- towards SGST [**total Rs. 41,30,049/-**]. However, on going through the GST RFD-06, [impugned OIO dated 12.7.2018], I find that the respondent has been sanctioned only Rs. 9,66,121/- towards IGST, Rs. 15,72,849/- towards CGST and Rs. 15,72,849/- towards SGST [**total Rs. 41,11,819/-**]. The review order in para 9 further states that the respondent is eligible for refund of Rs. 8,44,837/- towards IGST, Rs. 13,83,370/- towards CGST and Rs. 13,83,370/- towards SGST [**total Rs. 36,11,577/-**]. This stands contested by the respondent who states that they are eligible for refund of Rs. 8,44,838/- towards IGST, Rs. 13,75,400/- towards CGST and Rs. 13,75,400/- towards SGST [**total Rs. 35,95,638/-**]. Let me verify the facts, viz.



Table A1	Table B1	Table C1
As calculated in the Review Order	As calculated by the respondent	Correct calculation
Turnover of zero-rated supply of services =Rs. 47498714/- Net ITC = Rs. 4130049/- Adjusted Total Turnover = Rs. 54317558/-	Turnover of zero-rated supply of services =Rs. 47498714/- Net ITC = Rs. 4111819[4130049-18230] Rs. 18230/- refund claim withdrawn as per RFD -06 Adjusted Total Turnover = Rs. 54317518	Turnover of zero-rated supply of services =Rs. 47498714/- Net ITC = Rs. 4111819[4130049(-)18230] Rs. 18230/- refund claim withdrawn as per RFD -06 Adjusted Total Turnover = Rs. 54317558
Formulae Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover =47498714*4130049/54317558 =Rs. 3611577/-	Formulae Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover =47498714*4111819/54317518 =Rs. 3595637/-	Formulae Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover =47498714*4111819/54317558 =Rs. 3595637/-
Eligible Refund as per the review order = Rs. 36,11,577/-.	Eligible Refund as per the review order = Rs. 35,95,637/-.	Eligible Refund as per the review order = Rs. 35,95,635/-.

The departmental review has ignored the fact that Rs. 18,230/- refund claim was withdrawn as they were not eligible for ITC in respect of this amount. The contention of the respondent is correct to this extent. However, since the respondent has also made a small mistake, I have computed the eligible refund under table C1. So the erroneous refund amount needs to be worked out, viz.

Table D

	IGST	CGST	SGST	Total
Sanctioned vide the impugned OIO	966121	1572849	1572849	4111819
Eligible amount	844837	1375399	1375399	3595635
Erroneous refund	121284	197450	197450	516184

12. In view of the foregoing, I find that there is merit in the departmental appeal and therefore, I set aside the impugned OIOs to the extent they have erroneously sanctioned the excess refund as mentioned in **Table C** and **D** above for the months of August, 2017 & September, 2017 respectively.

13. The departmental appeals are allowed and both the impugned OIOs are set aside to the extent refund is erroneously sanctioned as mentioned in paras above. The prayer of the department for the recovery of the erroneously sanctioned excess refund along with interest, is also allowed.

14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

14. The appeal filed by the department-appellant stands disposed of in above terms.

उमा शंकर

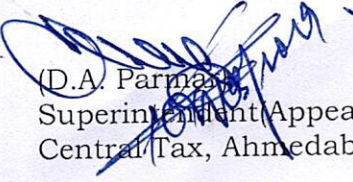
(उमा शंकर)

प्रधान आयुक्त (अपील)



Date : .03.2019

Attested


(D.A. Parmar)
Superintendent (Appeals),
Central Tax, Ahmedabad

By RPAD.

To,

M/s. Hi-Tech iSolutions LLP,
Hi-Tech House, B/h V-Murti Complex,
Gurukul Road, Memnagar, Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad- 380 009.
3. The Commissioner, Central Tax, Ahmedabad North Commissionerate.
4. The Assistant Commissioner, Central Tax Division- III, Ahmedabad North Commissionerate.
5. The Assistant Commissioner, System, Central Tax, Ahmedabad North Commissionerate.
6. Guard File.
7. P.A.



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