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
. ☎: 079-26305065 **टेलेफैक्स** : 079 - 26305136

By speed Post

क फाइल संख्या :File No : **V2(GST)31,41,47,49 & 50 /EA2/North/Appeals/2018-19** / 10822 to 10827

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-002-APP-02 to 06-19-20**

दिनाँक Date :**18/04/2019** जारी करने की तारीख Date of Issue: 30/05/2019

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 : दिनाँक : से सृजित

Arising out of Order-in-Original (i)**AB240717981085T,** Date: **21/05/2018, (ii) AB240817097853J,** Date: **25/06/2018 (iii) AB240917446101B,** Date: **28/08/2018 (iv) AB240917446101B(order No.0019.1/2018-19),** Date: **28/08/2018 (v) AB2411170023491T,** Date: **28/08/2018** Issued by: **Assistant** Commissioner ,CGST, Div: V, Ahmedabad North.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Astra Lifecare (India) Pvt. Ltd

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 पूवोक्त 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 प्रकिया 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 मामलें 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 डयूटी केडिट 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 हो।

(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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

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, बहूमाली 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 न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 beer a court fee stamp of Rs.6.50 paisa 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 in 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 अर्ज़ी एवं अपील को लागू नहीं होगे।

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 5 departmental appeals have been filed by Assistant Commissioner, Division V, CGST, 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 Commissioner, CGST, Ahmedabad North Comm'rate [in terms of Section 107(2) of the CGST Act, 2017]	Appeal No.
1	M/s. Astra Lifecare (India) Private Limited, 57/P, Sarkhej Bavla Highway, Rajoda, Ahmedabad.	AB240717981085T dtd 21.5.2018	35/2018-19 dtd 16.11.2018	V2(GST)31/EA-2/ North/ Appeals/18-19
2		AB240817097853J dtd 25.6.2018	56/2018-19 dtd 24.1.2019	V2(GST)41/EA-2/ North/ Appeals/18-19
3		AB241117002349I dtd 28.8.2018	68/2018-19 dtd 5.3.2019	V2(GST)50/EA-2/ North/ Appeals/18-19
4		AB240917446101B dtd 14.8.2018	58/2018-19 dtd 5.2.2019	V2(GST)49/EA-2/ North/ Appeals/18-19
5		AB240917446101B dtd 28.8.2018	59/2018-19 dtd 5.2.2019	V2(GST)47/EA-2/ North/ Appeals/18-19

The issue involved being the same, both the appeals are being taken up together.

2. Briefly, the facts of the case are that the respondent filed five refund claims for the months of July, August, September, October and November- 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, mentioned in the table *supra*, sanctioned the refund claims.

3. On the refund claims being sent for post audit, it was observed that the adjudicating authority had sanctioned the refund claims over and above the balance lying unutilized in respect of input tax credit available with the respondent during July 2017. The second objection was that the adjudicating authority erred in computing the value of turnover of zero rated supply of goods and services. Thereafter on the impugned orders-in-original, having been examined for its legality and propriety, the Commissioner, CGST, North Commissionerate vide his aforementioned Review Orders, directed the adjudicating authority to file the aforementioned appeals raising the following grounds:

- that as far as refund of **July 2017** was concerned, it was observed that [a] while they had availed input tax credit of Rs 40,80,167/- towards IGST and utilized Rs. 23,96,107 from IGST, they were granted refund of Rs. 34,45,784/- despite their being a balance of only Rs. 16,84,060/- and [b] that the value of export as per GST invoice declared by the respondent is Rs. 104270891/- and the export value [lower of invoice value and FOB value] is Rs. 104213674/-; that in terms of circular no. 37/11/2018-GST dtd 15.3.2018, the lower of the above two values has to be taken into consideration as turnover of zero rated supply of goods for calculation of maximum refund amount; that the adjudicating authority has considered taxable value declared by the respondent i.e. Rs. 108457893/-. The respondent is eligible for refund of Rs. 16,84,060/- for IGST, Rs. 13,71,161/- towards CGST and Rs. 13,71,161/- for SGST

by taking the lowest value of the two into consideration as turnover of zero rated supply of goods; that the adjudicating authority has sanctioned excess refund of Rs. 17,61,724/- for IGST, Rs. 55,843/- for CGST & Rs. 55,843/- for SGST [total Rs. 1873410/-];

- that as far as refund of **August 2017** is concerned, the value of export as per GST invoice declared by the respondent is Rs. 26610858/- and the export value [lower of invoice value and FOB value] is of Rs. 25426710/-; that the lower of the value in terms of circular dated 15.3.2018 should be considered for refund computation; that the adjudicating authority has considered taxable value declared by the respondent i.e. Rs. 26610858/-; that the claimant is eligible for refund only of Rs. 47,96,765/- for IGST, Rs. 7,91,359/- towards CGST and Rs. 7,91,359/- towards SGST; that the adjudicating authority has sanctioned excess refund of Rs. 2,23,390/- for IGST, Rs. 36,854/- for CGST and Rs. 36,854/- for SGST;
- that as far as refund of **September 2017** is concerned, the value of export as per GST invoice declared by the respondent is Rs. 135506950/- and the export value [lower of invoice value and FOB value] is of Rs. 130184097/; that the lower of the value in terms of circular dated 15.3.2018 should be considered for refund computation; that the adjudicating authority has considered taxable value declared by the respondent i.e. Rs. 135506950/-; that the claimant is eligible for refund only of Rs. 4461217/- for IGST, Rs. 1629348/- for CGST and Rs. 1591962/- for SGST; that the adjudicating authority has sanctioned Rs. 182406/- towards IGST, Rs. 66619/- for CGST and Rs. 65090/- towards SGST;
- that as far as refund of **October 2017** is concerned, the value of export as per GST invoice declared by the respondent is Rs. 38239984/- and the export value [lower of invoice value and FOB value] is of Rs. 37455147/; that the lower of the value in terms of circular dated 15.3.2018 should be considered for refund computation; that the adjudicating authority has considered taxable value declared by the respondent i.e. Rs. 38239984/-; that the claimant is eligible for refund only of Rs. 5873616/- for IGST, Rs. 2415601/- for CGST and Rs. 2415601/- for SGST; that the adjudicating authority has sanctioned Rs. 123075/- towards IGST, Rs. 50617/- for CGST and Rs. 50617/- towards SGST;
- that as far as refund of **November 2017** is concerned, the value of export as per GST invoice declared by the respondent is Rs. 44672994/- and the export value [lower of invoice value and FOB value] is of Rs. 44634375/-; that the lower of the value in terms of circular dated 15.3.2018 should be considered for refund computation; that the adjudicating authority has considered taxable value declared by the respondent i.e. Rs.44672994/-; that the claimant is eligible for refund only of Rs.4287639/- for IGST, Rs. 2036819/- for CGST and Rs. 2036819/- for SGST; that the adjudicating authority has sanctioned Rs. 3710/- towards IGST, Rs. 1762/- for CGST and Rs. 1762/- towards SGST.

4. The respondent vide his cross objections dated 17.1.2019, 28.2.2019, 2.4.2019, submitted the following

- that the department erred in filing this appeal;
- that the circular is dated 14.11.2018; that in respect of refund of July 2017, it was filed on 26.2.2018 and therefore the clarification circular dated 14.11.2018 would not apply to this refund claim; that the refund claim has been filed according to the forumale; that the value shown in USD is the same as shown in shipping bill but in GST invoices wherein value show in is INR the difference freight and insurance is not included; that the invoices showing currency in USD may be considered to who that there is no difference in the value shown in GST invoices as well as shipping bills; that they wish to rely on the case of Arviva Industries Limited [2004(167) ELT 135], Futura Polymers [2003(152) ELT 156];
- tat as per section 15(2)(c) of the CGST Act, 2017, value of supply includes incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time or before delivery of goods or supply of services;
- that FOB value as reflected in the shipping bill is not the transaction value but invoice value as reflecting in shipping bills is the transaction value;
- that the amount of freight and insurance is incurred by the respondent and therefore the amount of freight and insurance forms part of the transaction value;

5. Personal hearing in respect of all the appeals was held on 2.4.2019, wherein Shri Bhavesh Jhalawadia, CA appeared on behalf of the respondent and explained the case. The learned

CA further explained to me the value in the shipping bill which is to be taken. The respondent also submitted additional cross objections, raising the following contentions:

- that export value in the GST invoice is lower than the value as per the shipping bill;
- that in the circular it is nowhere mentioned that the comparision is to be made in between FOB value as per shipping bill and value as declared in the GST invoice;
- that FOB value as reflected is not the transaction value ; that the amount shown in USD is recovered from the importer; that while preparing the GST invoices in INR the freight and insurance amount was not separately reflected in the invoices;
- that the refund amount computed is compared with balance available in electronic credit legder at the time of filing refund; that on the day refund was filed there was a balance of Rs. 31188670/- in IGST
- that no exact bifurcation or calculation is given about the difference in refund due to comparision of refund with the balances available in electronic credit legder.

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 OIOs, are 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 section, rules which enables a person to seek refund of tax in such a situation, viz.

SECTION 54. Refund of tax. —

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed :

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

*(3) **Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period** :*

Provided that no refund of unutilised input tax credit shall be allowed in cases other than —
(i) zero rated supplies made without payment of tax;
(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council :
Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty :
Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

[emphasis added]

Section 2. Definitions. — In this Act, unless the context otherwise requires, —

(106) "tax period" means the period for which the return is required to be furnished;

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 -

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ 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 supp ly 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. Now let me consider first things first. As far as refund relating to July 2017 is concerned, the departmental appeal raises two objections. The first objection is that as per GSTR 3B the respondent had availed input tax credit of Rs. 4080167/- and the respondent had utilized IGST of Rs. 2396107/- Thus the balance available was only Rs. 1684060/- in respect of IGST. The adjudicating authority however sanctioned Rs, 3445784/- towards IGST. The mandate of Section 54(3) of the CGST Act, 2017, clearly states that a registered person may claim refund **of any unutilised input tax credit** at the end of any tax period. In this case, the question of granting refund, especially over and above the balance of unutilized ITC credit, in respect of IGST, is not tenable and therefore legally not correct and hence, erroneous. I have no hesitation in stating that the refund in such cases can be sanctioned purely by the mandate of Section 54(3) of the CGST Act, 2017. The respondents submission is that they had sufficient balance on the date of filing refund is not a tenable argument. When law is applied to facts, I find this argument legally untenable. What is not legally permitted as refund, cannot be given via any other means, even if it be an error on the GST portal as far as computing refund is concerned. Notwithstanding any grounds raised, I am of the firm belief, that no refund can be sanctioned over and above the balance lying unutilized in respect of ITC credit.

9. It was a fact that the portal during the said period when the erroneous refund was granted, computed the refund amount based on the lowest of the below mentioned three amounts:

[a] Value as per Statement 3A

[b] Balance in electronic credit ledger and

[c] Tax credit availed during the period.

10. However, I find that subsequently, vide Circular No. 59/33/2018-GST, dated 4-9-2018, it has been clarified as follows:

> *3. **System validations in calculating refund amount***
> *3.1 Currently, in case of refund of unutilized input tax credit (ITC for short), the common portal calculates the refundable amount as the least of the following amounts :*
> *(a) The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax + Integrated tax + Cess (wherever applicable)];*
> *(b) The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed; and*
> *(c) The balance in the electronic credit ledger of the claimant at the time of filing the refund application.*

Thus the ground raised in the departmental appeal, stands vindicated meaning that refund cannot be sanctioned over and above the balance lying in the electronic credit ledger in respect of the relevant period for which refund is granted. Therefore, the ground raised by the department that no refund above the unutilized balance lying in IGST amounting to Rs. 16,84,060/- could be sanctioned is correct.

10.1 I further find that Shri Bhavesh T Jhalawadia, Partner of M/s. Shah and Jhalawadia, who had appeared for the respondent has submitted a letter dated nil received on 3.4.2019 enclosing additional written submission in the matter. The ground raised in the additional submission is pertaining to the refund of July 2017. The learned CA has stated that the criteria for maximum refund admissible was provided in circular dated 4.9.2018, the relevant text of which I have reproduced above. He further states that at the time of filing claim for refund pertaining to July 2017, the maximum refund admissible was lowest of [a] value as per statement 3A or [b] tax credit availed during the period or [c]balance in electronic credit ledger of claimant during the filing of refund application. I have already discussed the issue in paras supra. In-fact as I have already stated the clarification of 4.9.2018, vindicates the stand of the departmental review and I do not find any merit in the additional grounds raised. The request for granting one more personal hearing, on the basis of this ground stands rejected, since I find no merit in the submission of the respondent.

11. Coming to the second ground raised in the refund of July 2017, I find that this is a common ground which is also raised as far as refund sanctioned for the months of August, September, October and November 2017 are concerned. The department based on internal audit objection has contended that the adjudicating authority sanctioned the refund by not taking the lower value of goods as per GST invoice declared by the respondent to the corresponding value of export as per shipping bills i.e. FOB value; that since there was a difference in the value, in terms of para 9.1 of circular no. 37/11/2018-GST dated 15.3.2018, the refund should be computed by taking the lower of the values into consideration.

12. I would like to reproduce the clarification, for ease of understanding, viz.

Circular No. 37/11/2018-GST, dated 15-3-2018

*9. **Discrepancy between values of GST invoice and shipping bill/bill of export :** It has been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under Section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill/bill of export.*

9.1 During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill/bill of export should be examined and the lower of the two values should be sanctioned as refund.

It is amply clear that what is meant is a comparison between the value mentioned in the shipping bill [in this case] and the GST invoice. Now the respondent has questioned the departmental ground by stating that nowhere is it mentioned that the FOB value mentioned in the shipping bill should be taken. This is not a correct, because the values mentioned in the shipping bill are invoice value, which would always be equal to the GST invoice and the FOB value. Therefore, I find merit in the department's contention that the lower of the value i.e. FOB value and the value mentioned in the GST invoice should be considered while granting refund.

13. The respondent has also relied upon Section 15 of the CGST Act, 2017, to submit that the value of supply includes incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time or before delivery of goods or supply of services. Here, I would like to mention that refund is a facilitation granted by the Government of India. Therefore, to argue and contend that in terms of Section 15 of the CGST Act, 2017, the value includes other elements and hence, the comparison should be between the value mentioned in the GST invoice and the FOB value and that the FOB value should be derived after adding freight and insurance, I think is stretching it to far. I do not agree with the contention.

14. The respondent has also contended that the Circular issued on 15.3.2018 cannot be made applicable to this refund, retrospectively. He also states that the circular is dated 14.11.2018. This is factually not correct. I find that the refunds were sanctioned after the issue of the clarification and therefore such clarifications were binding on the adjudicating authority, while sanctioning the refunds.

15. The last contention raised by the respondent is that the review order is not specific about the calculation. The calculation depicting the erroneous refund granted in respect of the impugned OIOs is attached as Annexure 'A', 'B', 'C','D', 'E' to this OIA.

16. Thus, the summary of the erroneous refund sanctioned is as follows:

Sr. No.	Impugned OIO No. and date	Erroneous refund of IGST	Erroneous refund of IGST	Erroneous refund of IGST	Total erroneous refund
1	AB240717981085T dtd 21.5.2018	1761724	55843	55843	1873410
2	AB240817097853J dtd 25.6.2018	223390	36854	36854	297098.6
3	AB241117002349I dtd 28.8.2018	3710	1762	1762	7234
4	AB240917446101B dtd 14.8.2018	182406	66619	65090	314116
5	AB240917446101B dtd 28.8.2018	123075	50617	50617	224309.4

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 sanctioned the amounts mentioned in Table above.

17. The departmental appeals are allowed and the impugned OIO is set aside to the extent it has sanctioned refund as mentioned in Table above. The prayer of the department for the recovery of the erroneous refund along with interest is also allowed.

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

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

(उमा शंकर)
प्रधान आयुक्त (अपील्स)

Date :18 .4.2019
Attested

(Vinod Lukose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.

By RPAD.

To,

M/s. Astra Lifecare (India) Private Limited,
57/P,
Sarkhej Bavla Highway,
Rajoda,
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- V, Ahmedabad North Commissionerate.
5. The Assistant Commissioner, System, Central Tax, Ahmedabad North Commissionerate.
6. Guard File.
7. P.A.