



सत्यमेव जयते

**आयुक्त ( अपील ) का कार्यालय,**  
Office of the Commissioner (Appeal),  
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



07926305065-

टेलीफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)13/Ahd-South/2019-20 / 15626 ट 0 15631

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-014-APP-JC-021/20-21  
दिनांक Date : 21-08-2020 जारी करने की तारीख Date of Issue : 10/09/2020

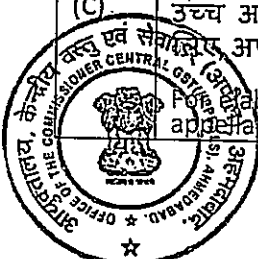
श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathor, Joint.Commissioner (Appeals)

ग Arising out of Order-in-Original No CGST/WS08/REF-130/BSM/2018-19 दिनांक: 19.12.2019 issued by Assistant Commissioner, Central GST, Division-VIII, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M/S Babaz Sales Corporation,  
2/F, Satnam Estate, B/H H.P. Petrol Pump, Bavla Road,  
Sanathal Chowkde, Ahmedabad-382210.

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of 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 involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	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, 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.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, 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.
(ii)	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 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.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



**ORDER-IN-APPEAL**

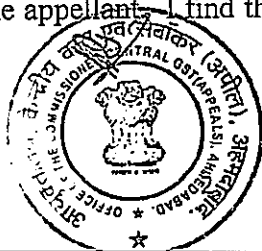
This order arises out of an appeal filed by the Assistant Commissioner, Central GST, Division-VIII, Ahmedabad South Commissionerate (in short '*appellant*') in terms of Review Order No.09/2019-20 dated 21.08.2019 issued under Section 107(2) of CGST Act, 2017 (in short '*the Act*') by the Reviewing Authority against RFD-06 Order-in-Original No.CGST/WS08/Ref-130/BSM/2018-19 dated 19.12.2018 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VIII, Ahmedabad South Commissionerate (in short '*the adjudicating authority*') in the case of M/s Babaz Sales Corporation, 2/F, Satnam Estate, B/H H.P. Petrol Pump, Bavla Road, Sanathal Chowkdi, Ahmedabad-382 210 (in short '*respondent*').

2. Brief facts of the case are that the respondent holding GST Registration number 24EYNPS7615N2ZI had filed a refund application having ARN No.AA2410188152510 and Acknowledgement No.138/18-19 dated 26.11.2018 for an amount of Rs.47,71,063/- under form RFD-01A for the month of September, 2018 in respect of the refund of unutilized Input Tax Credit (ITC) on input services used for goods exported under LUT vide ARN No.AA240418002121Z dated 02.04.2018. The said claim was filed under the provisions of Section 54(3) of the CGST Act, 2017 read with Section 16 of the Integrated Goods and Service Tax Act, 2017 and Rule 89(4) of the Central Goods & Services Tax Rules, 2017. After examination of the said refund application filed by the respondent, the adjudicating authority has sanctioned the refund claimed by the respondent in full amounting to Rs.47,71,063/- (inclusive of the amount of refund sanctioned provisionally) under Section 54(8) of CGST Act, 2017 vide the impugned order.

3. During the course of pos-audit of the above said refund claim, it was noticed that the value of Total Adjusted Turnover considered while calculating the admissible refund in terms of Rule 89(4) of the CGST Rules, 2007 was Rs.91,22,446.20 as shown in RFD-01 whereas it was required to be Rs.1,21,67,586/- as reflected in the GSTR 3B & GSTR1 and considering the Total Adjusted Turnover as Rs.1,21,67,586/-, the eligible refund should be Rs.35,78,576/- instead of Rs.47,71,063/- and thus there was an excess payment of refund amounting to Rs.11,92,487/- by the adjudicating authority vide the impugned order. Therefore, the impugned order was reviewed by the Principal Commissioner, Central GST, Ahmedabad vide Review Order No.09/2019-20 dated 21.08.2019, in pursuance of which the present appeal has been filed against the impugned for excess payment of refund.

4. Personal Hearing in the matter was held on 16.07.2020. Shri Bunt Kewalramani, Manager, appeared on behalf of the respondent for the hearing. After making his oral submissions in the matter, he sought time to produce documents in support of his contentions. No one appeared from the side of the appellant. The respondent on 23.07.2020 submitted copies of invoices involved in the matter.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the respondent at the time of hearing and the documents submitted by the appellant. I find that the issue to be decided in the case is as



to whether there is an error in the calculation of eligible refund of ITC by the adjudicating authority in the case which has resulted in an excess payment of refund of an amount of Rs.11,92,487/-, as contended by the department.

6. It is observed that the refund claimed by the appellant in the present case is under the provisions of Section 54(3) of the CGST Act, 2017 read with Section 16 of the Integrated Goods and Service Tax Act, 2017 and Rule 89(4) of the Central Goods & Services Tax Rules, 2017 in respect of unutilized Input Tax Credit (ITC) on input services used for export of goods without payment of duty under LUT. It is the case of the department that while calculating the admissible refund under Rule 89(4) of the CGST Rules, the adjudicating authority should have derived the Adjusted Total Turnover considering the details of total taxable value declared in the GSTR 3B and GSTR 1 returns filed by the respondent instead of the same declared in the RFD01A form filed which was on a lower side.

7. The refund claimed under Section 54(3) of the CGST Act, 2017 read with Section 16 of the Integrated Goods and Service Tax Act, 2017 is sanctioned as per the provisions laid down under Rule 89(4) of the CGST Rules, 2017 which reads as under:

*(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 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 -

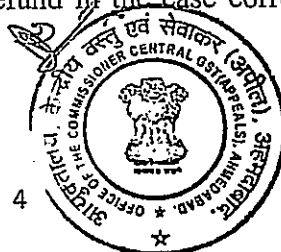
- (i) the value of exempt supplies other than zero-rated supplies; and
- (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,

during the relevant period.

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

From the above provisions, the adjusted total turnover to be applied in the above formula prescribed for calculating refund amount has to be 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. As per clause (112) of Section 2 of CGST Act, 2017, "turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess. It is clear from clause (112) of Section 2 of CGST Act, 2017 that turnover in a State would be the total value of all outward supplies made from the state including all taxable supplies and exempt supplies, exports and inter-state supplies.

7.1 I find that in the present case, total value of all outward supplies made by the respondent was Rs.1,21,67,586.51 as per Table 3.1 of GSTR-3B Return. The same value is reflected as Total Taxable Value in their GSTR1 Return. Copies of invoices submitted by the respondent also confirms the total value of supplies declared in the above two returns. Thus, it stands established that the total value of outward supplies made by the appellate from the state was Rs.1,21,67,586.51 during the relevant period. That being so, the value of adjusted total turnover that needs to be considered for calculating the refund in the case has to be the total value of outward supplies made by the appellate from the state during the relevant period which was Rs.1,21,67,586.51 as discussed. It seems that the respondent has considered only the total value of zero rated supplies made without payment of tax as Adjusted Total Turnover in their RFD-01A form which is not correct for reasons discussed hereinbefore. By applying the said value of Rs.1,21,67,586.51 as Adjusted Total Turnover in the formula given under Rule 89(4) of CGST Rules, 2017, the refund admissible/eligible to the respondent in the case works out to Rs.35,78,576/-. However, the adjudicating authority has sanctioned refund for an amount of Rs.47,71,063/- as claimed by the respondent. Thus, it becomes clear that an amount of Rs.11,92,487/- has been sanctioned in excess as refund by the adjudicating authority to the respondent. In view thereof, it is to be held that the adjudicating authority has clearly erred in calculating the admissible refund in the case correctly and has erroneously





O

The appeal filed by the appellant stand disposed off in above terms.

**Joint Commissioner (Appeals)**

Attested

By Regd. Post A. D/Speed Post

The Assistant Commissioner,  
Central GST, Division-VIII,  
Ahmedabad South Commissionerate .

Appellant

Respondent

Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Commissioner, CGST Appeals, Ahmedabad.
4. The Dy./Asstt. Commissioner, CGST, HQ (Systems), Ahmedabad South.  
(for uploading OIA)
5. Guard File.
6. P.A. File.

