



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

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DIN20201264SW000000A4AE

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)30/EA-2/Ahd-South/Appeals/2019-20

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-028/2020-21  
दिनांक Date : 27.11.2020 जारी करने की तारीख Date of Issue : 10.12.2020

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No WS06/Ref-002/Zauri/SKC/2018-19 दिनांक:  
14.06.2019 Passed by The Assistant Commissioner, CGST, Division-VI Ahmedabad South.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent:

Appellant- The Assistant Commissioner, CGST, Division-VI Ahmedabad South.

Respondent- M/S Zauri Agro Chemicals Ltd., 501/502 "Aditya" 5th Floor, Nr. Mithakhali Six Road, Ellisbridge-Ahmedabad-380006.

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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

The below mentioned departmental appeal have been filed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad-South [herein after referred to as the 'adjudicating authority'] under sub-section(2) of 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 Principal Commissioner, Central Goods & Service Tax, Ahmedabad-South [in terms of Section 107(2) of the CGST Act, 2017]	Appeal No.
1	M/s. Zauri Agro Chemicals Limited, 501/502 "Aditya" 5th Floor, Opp-Sardar Patel Seva Samaj Hall, Near Mithakhali Six Roads, Ellisbridge, Ahmedabad-380006. GSTN:24AAACZ3924H1ZE.	WS06/Ref-002/Zauri/SKC/2018-19 dated 14.06.2019	26/2019-20 dtd 20.12.2019	V2(GST)30/E A-2/ Ahd-South/2019-20.

2. The facts of the case in brief are that the respondent engaged in distribution of Muriate of Potas, Di-Ammonium Phosphate, Sulphate of Potash, Urea, Rock Phosphate, Gypsum etc. at subsidize price to dealers across India filed refund claim dated 14.08.2018 manually for Rs.2,40,07,603/- in respect of the period August 2017 seeking refund of ITC accumulated due to inverted tax structure as prescribed under Circular No.17/17/2017-GST dated 15.11.2017 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. As against said claims, the adjudicating authority, vide impugned OIO sanctioned the refunds of Rs.4,92,49,620/-. The claimant imports "Potash" (HSNCode-2815) upon which 5% IGST is liable and distributes various fertilizers mentioned above upon which 5% GST is liable. The claimant has claimed ITC which is accumulated due to Inverted Tax structure. The adjudicating authority observed that a manufacturing industry may have multiple numbers of inputs with variable tax rates. Some having



lower tax rate than output, some having the same rate as output, some in the nature of inverted duty structure. For the purpose of calculating refund on account of inverted duty structure, entire credit of inputs can be considered. The adjudicating authority found that said claim is eligible for refund under inverted duty structure as per the provisions of Noti.No.21/2018-Central Tax dated 18.04.2018.

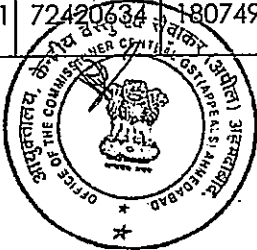
2.1 The computation of refund to be claimed as per statement-1 of RFD-01A was as under:

	Turnover of inverted rated supply of goods	Tax payable on such inverted rated supply of goods	Adjusted Total Turnover	Net Input Tax Credit	Refund Amount [(1x4/3)-2]
Integrated Tax	470652030	23532602	470652030	94082543	70549941
Central Tax					
State Tax					
Cess					

2.3 On going through the documents, the adjudicating authority found that the claimant has shown in statement-1 the inverted rated supply Rs.47,06,52,030/- and tax paid on such supply Rs.2,35,32,602/- at the rate of 5% : that adjusted total turnover in table 3.1 of GSTR-3B Rs. Rs.47,06,52,030/- which has been shown in RFD-01A. With reference to **Net Input Tax Credit**, it was observed by the adjudicating authority that as per purchase register, invoice value of Rs.1,43,78,48,847/- involving ITC Rs.7,36,16,551/- was found. After deducting ITC availed on input service Rs.8,34,330/- which is not eligible, remaining ITC Rs.7,27,82,221/- was found eligible for computation of eligible refund.

2.4 Sale and purchase were summarized as under:

Purchase					Sale				
	Taxable Value	IGST	CGST	SGST	Taxable Value	IGST	CGST	SGST	
0%	2262624	0	0	0	0	0	0	0	
5%	1410709433	0	0	0	470652030	23532601	0	0	
18%	12481944	1885163	180749	180749	0	0	0	0	
	1425454001	72420634	180749	180749	470652030	23532601	0	0	



2.5 Based on the above observations with reference to ITC and value of supply, the adjudicating authority calculated maximum amount of refund in term of the provisions of Section 54(3)(ii) of the CGST Act, 2017 read with Rule 89(5) of CGST Rules, 2017, as under:

Description	Turnover of Inverted rated supply of goods	Tax payable On such Inverted rated supply of goods	Adjusted Total turnover	Net Input Tax Credit	Maximum Refund Amount $\{(1 \times 4/3) - 2\}$
	(1)	(2)	(3)	(4)	(5)
IGST	470652030	23532601	470652030	72782221	49249620
CGST					
SGST					

Eligible refund amount found by the adjudicating authority as shown above Rs.4,92,49,620/- whereas the claimant has claimed only Rs.2,40,07,603/- which was less to the tune of Rs.2,52,42,017/-. The adjudicating authority therefore, requested the claimant to debit through GST DRC-3 said Rs. 2,52,42,017/- from Electronic Credit Ledger which was debited by the claimant on 12.06.2019 vide reference No.D1240619007793. Accordingly, the adjudicating authority sanctioned refund of Rs. 4,92,49,620/- under the impugned order.

3. Thereafter, the impugned order on being examined for its legality and propriety by the Principal Commissioner, CGST & C.Ex., Ahmedabad-South Commissionerate vide his aforementioned Review Order, directed the adjudicating authority to file the aforementioned appeal raising the grounds as under:

- 1) In view of the provisions of Section 54(3) of the CGST, Act 2017 which clearly stipulates that refund of unutilized input tax credit is admissible only in **two situations** i.e. cases where the accumulation is on account of zero rated supply made without payment of tax and the rate of tax on input is higher than the rate of tax on output supplies. Apart from above two situations, no refund of unutilized input tax credit has been provided. However, in the instant case, the accumulation of ITC is mainly for the reasons of lower sale price as compared



to purchase price. During the period in question, the inputs viz. Muriate of Potas, Di-Ammonium Phosphate, Sulphate of Potash, Urea, Rock Phosphate, Gypsum etc were imported by the appellant at the value of Rs.1,41,07,09,433/-and said imported goods were distributed at subsidized price of Rs.47,06,52,030/- to their dealers across India. Such reduction in sale price is the main cause of accumulation of ITC. Further, the rate of tax on input is 5% and rate of tax on output supplies is also 5%(CGST 2.5 % & SGST 2.5%). Thus this is not a case where rate of tax on input is higher than the rate of tax on output supplies. Also, in view of the fact that output supplies are made in India, there are no zero rated output supplies without payment of tax. Thus accumulation of input tax credit is not owing to any of the situations specified under first proviso to Section 54(3) of the CGST Act, 2017 and corresponding State GST Act. Accordingly refund of ITC of unutilized credit, does not qualify in term of Section 54(3) of the CGST Act, 2017. The adjudicating authority has therefore erred in sanctioning refund of Rs. Rs.4,92,49,620/- to the respondent by considering that value of imported goods Rs.1,41,07,09,433/- by paying IGST 5% and purchase packing material of Rs.1,24,81,944/- by paying 18% CGST/SGST/IGST and the same imported goods were distributed at subsidized price of Rs.47,06,52,030 to dealers across India on payment of CGST/SGST/IGST at the rate of 5%. Therefore, the refund does not fall on account of ITC accumulated on account of inverted tax structure in term of Section 54(3)(ii) of the CGST Act, 2017.

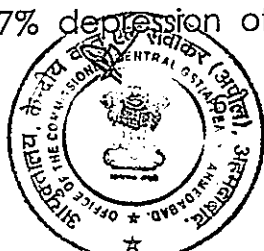
- 2) The provisions of sub-section 5 and 8 of Section 54 of the CGST Act, 2017 stipulates that proper officer for making order of refund of whole or part of the amount claimed subject to conditions specified therein. The language therein clearly indicates that refund has to be sanctioned in whole or part of the amount claimed and not empowered to sanction a refund in excess of the amount claimed. In other words, said section restricts the proper officer i.e. jurisdictional AC/DC to sanction higher amount than that of claimed amount. However the adjudicating authority has sanctioned refund



Rs.4,92,49,620/- instead of amount claimed Rs.2,40,07,603/- as mentioned in RFD-01A.

- 3) The impugned order at para 8 mentions regarding request made to the claimant to debit the amount which was claimed less on the basis of Circular No.94/12/2019-GST dated 28.03.2019. However, para 1,2,3 of said circular clarifies the condition where claimant has reversed the ITC in term of Noti. No.20/2018 Central Tax (Rate) dated 26.07.2018 read with Circular No.56/30/2018-GST dated 24.08.2018 which is amendment of earlier Noti. No.5/2017-Central Tax(Rate) dated 26.06.2017 wherein refund of ITC due to inverted tax structure was not allowed to specific goods mentioned in column 3 (HSN-in column 2). However goods of the appellant do not fall under those HSN and hence these three types are not applicable to this case. Further, Sr. No. 4 of said circular clarifies conditions how merchant exporter claim refund which is not a case here. Sr. No 5 of said circular clarifies conditions wherein claimed amount was re-credited by way of RFD-01B due to non compliance of deficiency memo by the claimant within time prescribed. In such cases, claimant can re-submit refund application manually in form GST RFD-01A. The proper officer shall then process the claim as per guidelines and on being satisfied that whole or part of the claim is payable, then he shall request the tax payer in writing to debit said amount thorough DRC-03. However, in the instant case, no re-credit through RFD-01B was done, hence said clarification will not applicable in this case. Etc.,.

4. In the virtual personal hearing held on 22.10.2020 Shri Nitin D Thakkar, advocate attended on behalf of the respondent. They submitted cross objection vide letter dated 24.09.2020 *inter alia* stating that they import various fertilizer DAP(Di ammonium Phosphate),MOP(Murate of potash) at the rate of 5% and packing material at the rate of 18% in bulk quantities and re-pack the same in 50 kg bags. Comparison of GST rate of inward and outward supply will reveal that there exist inverted rate structure and hence the ground taken in appeal that no inverted rate structure exists is not correct ; that with reference to accumulation of ITC, the ground taken is that it occurred due to 67% depression of value. However, in view of the

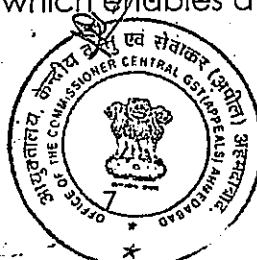


Department of Fertilizer's Office Memorandum No. 23011/17/2016-MPR dated 17.04.2017, the price of the fertilizer are subsidized to the extent mentioned therein and they are not left with the option but to compelled to sale fertilizer at subsidized price controlled by the government.; that there is no intentional or deliberate depression or reduction in value just to earn refund of GST; that the Section 54(3) (ii) of the CGST Act,2017 does not exclude such scenario to disallow refund.

4.1 The respondent referred Section 2(31) and Section 15 of the CGST Act,2017 and argued that through they were desiring to include subsidy in the value of supply, they cannot do so for the reasons that their supplies are controlled by the government. They further argued that Section 54(iii) unambiguously suggest that refund of input tax credit is available if there is Inverted Rate Structure. ITC accumulated on account of reduction in price of fertilizer and hence it would be incorrect to conclude that refund is not on account of inverted rate structure. It would amount to addition in statute i.e. in Section 54(iii) of the CGST Act,2017, which is not permissible. With reference to the ground of the appeal that Section 54(5) and 54(8) of the CGST Act,2017 restricts. refund claim amount than what is originally applied for, the Respondent reproduced said provisions and argued that the contention of the appellant is not correct.

5. I have carefully gone through the facts of the case, the impugned original order, the grounds raised in the review order 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 in term of the provisions for refund of accumulated Input Tax Credit on inverted tax structure?

6. The matter deals with refund of unutilized input tax credit accumulated on account of tax on input being higher than rate of tax on output supplies and therefore before moving forward, let me first reproduce the relevant part of Section 54(3) of the Central Goods and Service Tax Act, Rules, 2017 which enables a person to seek refund of tax in such a situation, viz.



(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~~ 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.

6.1 In view of the provisions above, refund of unutilized input tax credit is admissible only in **two situations** i.e. cases where the accumulation is on account of zero rated supply made without payment of tax and cases where rate of tax on inputs is higher than the rate of tax on output supplies. Further, the specific proviso "Provided that no refund on unutilized input tax credit shall be allowed in cases other than ---", makes it clear that no refund of unutilized input tax credit can be granted in any situations other than above two. However, in the instant case, the prime ground of the appeal is that the accumulation of ITC is mainly for the reasons of lower sale price as compared to purchase price. Said ground of the appellant is based on facts that during the period in question, the inputs viz. Muriate of Potas, Di-Ammonium Phosphate, Sulphate of Potash, Urea, Rock Phosphate, Gypsum etc were imported by the appellant at the value of Rs.1,41,07,09,433/-and said imported goods were distributed at subsidized price of Rs.47,06,52,030/- to their dealers across India. Thus, such reduction in sale price is the main cause of accumulation of ITC. I find from above data of import and distributions which reveals that there are significant reduction in price of supplies made as compared to import price. Thus it is apparent that such reduction in sale price is the main cause of accumulation of ITC. Therefore, it is as clear as day light that the accumulation of the ITC is due to reduction in sale price and not because of any of the two situations stipulated as above. I,





therefore, find force in the ground of the appellant wherein it is stated that accumulation of input tax credit is not owing to any of the situations specified under first proviso to Section 54(3) of the CGST Act, 2017. Another situation as a result of which refund of accumulated ITC arises is zero rated output supplies without payment of tax. Since there is no zero rated supplies made by the respondent, the same is not part of the dispute of present appeal.

7. It is contested by the respondent that they import various fertilizer DAP(Di ammonium Phosphate),MOP(Murate of potash) etc., at the rate of 5% in bulk quantities & packing material at the rate of 18% and re-pack the same in 50 kg bags. Comparison of GST rate of inward and outward supply will reveal that there exist inverted rate structure and hence the ground taken in appeal that no inverted rate structure exists is not correct. In this context, It is observed that the wordings of the Section 54(3) (ii) states that *"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."* Said phrase "inputs" certainly stand for "all the inputs" used. Thus, the phrase place an obligation on the claimant that for refund under inverted duty structure, all inputs used should be of higher rate of tax. In the other word, in a the situation wherein the claimant have only one input attracting higher rate of tax and remaining inputs attracts lower or equal rate, it would not make them eligible for refund under inverted duty structure. Thus, in view of the fact that in the present case where out of all inputs, only one input attracts rate of tax higher than rate of tax on output supplies, the claim of the appellant that the rate of tax on input and rate of tax on output supplies is also 5%, and there is no inverted rate structure holds good. Thus, the plea of the appellant that the present refund claim is not a case where rate of tax on input is higher than the rate of tax on output supplies is acceptable. Thus, in view of the fact that that only one inputs attracts higher rate than rate on output supply, all the ingredients of the provisions i.e. section 54(3) has not been fulfilled.

8. With reference to accumulation of ITC, It is pleaded by the respondent that in view of the Department of Fertilizer's Office Memorandum No. 23011/17/2016-MPR dated 17-04-2017, the price of the



Fertilizer are subsidized to the extent mentioned therein and they are not left with the option but to compelled to sale fertilizer at subsidized price controlled by the government. In this context it is observed that once the refund is claimed under the provisions of the CGST Act and Rules, the eligibility of the same needs to be scrutinized in term of term of the CGST Act and Rules and the same shall prevail over any other statutory provisions. Conditions/procedures/restrictions whatever prescribed in the CGST Act/Rules needs to be followed by the claimant and the claim needs to be scrutinized by the refund sanctioning authority in term of the same. Thus, any refund claimed under the provisions of the CGST Act ,2017 if found not in consonance with the CGST Act/Rules, shall be become liable for rejection. Therefore, the argument of the respondent which is based on office memorandum issued by Department of Fertilizer is inappropriate.

9. It is further contested by the respondent that the Section 54(3)(ii) of the CGST Act,2017 does not exclude the scenario relating to subsidized price of supply. In this context, it is observed that the present refund claim has not qualified on merit in term of Section 54(3)(ii) of the CGST Act,2017, there is no need to ascertain the fact whether any exclusion to such scenario is provided in the statute or not. Therefore, said argument made by the respondent is irrelevant and cannot be accepted.

10. They argued further that Section 54(iii) unambiguously suggest that refund of input tax credit is available if there is Inverted Rate Structure; that ITC accumulated on account of reduction in price of fertilizer and hence it would be incorrect to conclude that refund is not on account of inverted rate structure. It would amount to addition in statute i.e. in Section 54(iii) which is not permissible. In this context, it is observed that the main prerequisite under Section 54(iii) of the CGST Act,2017 is that the credit must have 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. In view of the fact that the credit has not been accumulated on account of rate of tax inputs being higher than the rate of tax on output supplies but it has been accumulated for

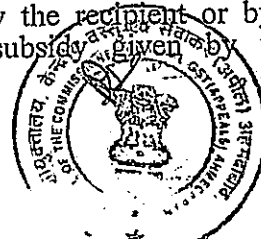


other reason, the prime ingredient of the provision supra has not been complied with or satisfied. Therefore, the ground of the appeal based on such observation is correct and legal and in the spirit of the provision supra. While arguing that Section 54(iii) unambiguously suggest that refund of input tax credit is available if there exist Inverted Rate Structure, the respondent failed to appreciate in its true spirit, the main riders/conditions stipulated in the provision supra which speaks that the credit must be **accumulated** on account of rate of tax on inputs being higher than the rate of tax on output supplies. Thus, the provision supra clearly emphasizes on cause of accumulation of the credit. If the credit has accumulated on account of the reason other than reason mentioned in the statute, the claim would certainly remain out of the purview of the Section 54(iii) of the CGST Act,2017 and shall disqualify on merit. In view of this discussion, the argument of the respondent that Section 54(iii) unambiguously suggests that refund of input tax credit is available if there is Inverted Rate Structure is not correct for the reasons that said provisions emphasizes on source of accumulated of ITC as well. Such argument is also not acceptable for the reason that it out rightly advocates in favor of allowing refund even to the cases wherein ITC availed has been found inadmissible. In view of the above discussion, I observe that the statute i.e. Section 54(iii) of the CGST Act,2017 has been interpreted correctly in the appeal memorandum and there appears no scope of any 'addition' in the statute. The case laws relied upon by the respondent in this regard are, thus, not applicable to the present appeal for the reasons that said ground of the appeal is not supported by any such addition as claimed by the respondent.

11. The respondent referred Section 2(31) and Section 15 of the CGST Act,2017 and argued that through it was desired by them to include subsidy in the value of supply, they cannot include it because of the fact that their supplies are controlled by the government. In this context, I reproduce below said Section 2(31) and Section 15 of the CGST Act,2017 for ease of reference:

(31) "consideration" in relation to the supply of goods or services or both includes —

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;



(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government :

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

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**SECTION 15. Value of taxable supply.** — (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include —

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) 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 of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

**Explanation.** — For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

It reveals from the above that the explanation provided in Section 15(2), lay emphasis on the claimant to include amount of subsidy in the value of supply. However, the respondent failed to include the same in value of supply. Furthermore, In view of the fact that the credit has not been accumulated on account of rate of tax inputs being higher than the rate of tax on output supplies but it has been accumulated for other reason and thus the main ingredients of the provision Section 54(iii) of the CGST Act, 2017 has not been satisfied/complied with. The refund claim was thus liable for rejection on that count only. Therefore, such the



argument related to valuation aspects of the supply in question does not hold good.

12. With reference to the ground of the appeal that Section 54(5) and 54(8) of the CGST Act,2017 restricts refund claim amount than what is originally applied for, the Respondent reproduced said provisions and argued that the contention of the appellant is not correct. They refrain from making any submission unfolding as to how the said ground in the appeal is not correct. However, on said issue of restriction of refund under Section 54(5) and 54(8) of the CGST Act,2017,it is observed that in so far the rectified refund amount exceeded the original amount claimed, the refund sanctioning authority was bound to follow the directives available under the provisions of sub-section 5 and 8 of Section 54 of the CGST Act,2017 which clearly stipulates for proper officer for making order of refund of whole or part of the amount claimed subject to conditions specified therein. The language of this provision clearly point outs that refund has to be sanctioned in whole or part of the amount claimed. Said provision nowhere authorizes or empowers the refund sanctioning authority to sanction refund in excess of the amount claimed. On the contrary, it restricts such authority from sanctioning refund amount higher in quantum than originally claimed. Therefore, I find force in the ground raised by the appellant wherein it is argued that the provisions of sub-section 5 and 8 of Section 54 of the CGST Act,2017 restricts the proper officer i.e. jurisdictional AC/DC to sanction refund in excess than that of claimed amount. However the adjudicating authority has sanctioned refund Rs.4,92,49,620/- instead of amount claimed Rs.2,40,07,603/- as mentioned in RFD-01A. The impugned order is not maintainable on this count too. Thus, the refund eligibility claimed by the respondent in the arguments made by them is not in tune with the provisions of Act.

13. In view of the observations in foregoing paras, the arguments made by the respondent are not acceptable, I find that there is merit in the departmental appeal and therefore, I set aside the impugned OIO to the extent it erroneously sanctioned the refund.

14. The departmental appeal is allowed and the impugned OIO is set aside. The prayer of the department for the recovery of the erroneously sanctioned refund along with interest is also allowed.



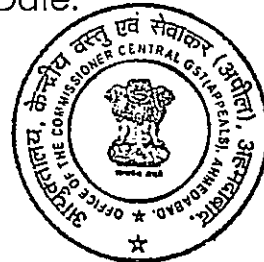
15. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

(Mukesh Rathore)

Joint Commissioner,  
CGST, Appeals.

Date:



Attested

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

By R.P.A.D.

To,  
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Ellisbridge, Ahmedabad-380006.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad.
3. The Commissioner, CGST, Appeals, Ahmedabad.
4. The Commissioner of Central Tax, Ahmedabad-South.
5. The Additional /Joint Commissioner, Central Tax(System), Ahmedabad-South.
6. The Assistant Commissioner, CGST, Division-VI(Satellite), Ahmedabad-South.
7. Guard File.
8. P.A. File