



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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फाइल संख्या : File No : GAPPL/ADC/GSTP/738/2021-APPEAL / 6084-89  
अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-114/2021-22  
दिनांक Date : 09-02-2022 जारी करने की तारीख Date of Issue : 09-02-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

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Arising out of Order-in-Original No. ZN2407200432196 दिनांक: 28-07-2020 issued by  
Deputy Commissioner, Division I, Rakhial, Ahmedabad South

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

Shri Balkrishan Kashiprasad Bajal of M/s. Balaji Trading Company,  
22, Nutan Cloth Market, O/S Raipur Gate, Ahmedabad-380022

(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

Shri Balkishan Kashiprasad Bajaj of M/s.Balaji Trading Company, 22, Nutan Cloth Market, O/S Raipur Gate, Ahmedabad 380 022 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 19-3-2021 against Order No.ZN2407200432196 dated 28-7-2020 (hereinafter referred to as the 'impugned order') passed by the Deputy Commissioner, Division I, Rakhial, Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant, registered under GSTIN 24AEDP88127Q1ZC, has filed refund claim for Rs.29,51,662/- for refund of ITC on export of goods and service without payment of tax. The appellant was issued show cause notice bearing No.ZY2406200327840 dated 26-6-2020 proposing rejection of claim due to mis match of ITC and on the ground as to whether Notification No.49/2019-CT dated 9-10-2019 is complied or not and that there is difference in turnover and tax paid /payable. Zero rated t/o Rs.38297805/- (Notification NO.16/2020 CT dated 23-3-2020) adjusted T/O Rs.91949517/- and Net ITC Rs.4244036/- (Annex B) refund calculated Rs.17,67,679/-. The adjudicating authority vide impugned order held that refund of Rs.29,51,662/- is inadmissible on the ground that the claimant neither appeared in personal hearing nor replied to SCN. Accordingly, refund amount of Rs.29,51,662/- becomes inadmissible and rejected for non compliance of SCN as per Section 54 of CGST Act, 2017.

3. Being aggrieved the appellant filed the present appeal on the following grounds :

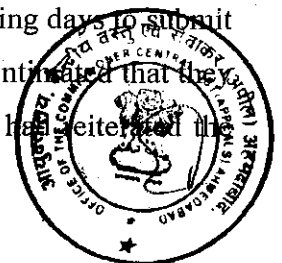
That they had complied with Notification No.49/2019 dated 9-10-2019 as well as Notification No.16/202-CT dated 23-3-2020 as they had claimed all the necessary GST credit as are reflected in GSTR2A and also they had filed refund application as per the turnover definition provided in the Notification as specified above.

That the Department has not provided them the refund of the amount which was sanctioned and rejected the whole amount of refund which the assessee was eligible to ;

That they had complied with all the necessary Notifications wherever applicable.

In view of above submissions the appellant requested for early refund of credit lying in the credit ledger of GST at the earlier so as to facilitate the working capital requirements ; that the cash equivalent as huge money has been blocked in the refund process.

4. Personal hearing was held on 12-1-2022. Shri Hardik C Oswal, authorized representative appeared on behalf of the appellant on virtual mode. He has been given 7 working days to submit additional submissions. Accordingly the appellant via email dated 12-1-2022 intimated that they had already submitted grounds of appeal on dated 25-10-2021, wherein they had reiterated the submissions made in their grounds of appeal.



5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. At the outset I find that the impugned order was communicated to the appellant on dated 28-7-2020 but the present appeal was filed on 19-3-2021 ie after a period of 8 months and consequently the subject appeal was filed beyond the time limit prescribed under Section 107 of CGST Act 2017. However as per Hon'ble Supreme Court's Order dated 23-3-2020; Order dated 27-4-2021 and Order dated 23-9-2021, extending the time limit for filing of appeal, I hold that the present appeal is not hit by time limitation factor.

6. In this case the claim was made for refund of ITC on account of export of goods and services without payment of tax. Such supplies are termed as 'zero rated supply' under Section 16(1) of the IGST Act, 2017. As per Rule 89 (4) of CGST Rules, 2017 in case of zero rated supply of goods the maximum amount of refund is to be determined by applying the following formula :

$$\frac{\text{Turnover of zero rated supply of goods} + \text{Turnover of zero rated supply of service} \times \text{Net ITC}}{\text{Adjusted total turnover}}$$

I find that as per Notification No.16/2020, amendment was made under Rule 89 (4) of CGST Rules, 2017 as under :

8. In the said rules, (Central Goods and Services Tax Rules, 2017) in rule 89, in sub-rule (4), for clause (C), the following clause shall be substituted, namely:- „(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 or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;"

7. In this case the appellant in their refund application has determined and claimed refund as under :

	Turnover of zero rated supply of goods and services	Adjusted total turnover	Net ITC	Maximum refund amount to be claimed $1 \times 3 / 2$
	1	2	3	4
Integrated tax	56788327	91949516	4780903	2951662

As against the above claim amount, in the show cause notice, the admissible refund was arrived at Rs.17,67,679/- taking into account the turnover of zero rated supply of goods and services at



Rs.3,82,97,805/- ; adjusted turnover at Rs.9,19,49,516/- and net ITC at Rs.42,44,046/- as per Annexure B.

8. I have verified copy of GSTR3B return submitted by the appellant and find that the total taxable value of outward taxable supplies (other than zero rated) and taxable value of outward zero rated supply of goods during the claim period is as under :

Month	Total taxable value of outward taxable supplies (other than zero rated)	Taxable value of outward zero rated supply of goods (on payment of tax plus without payment of tax)	Taxable value of outward zero rated supply of goods without payment of tax (taken in refund application)
April 2019	3262074	14681942	5032622
May 2019	3466672	8462275	8462275
June 2019	3221970	10837755	10837755
July 2019	2608434	8552610	8552610
August 2019	3309189	10855327	10855327
September 2019	2992486	2157390	2157390
October 2019	2240684	5923092	5923092
November 2019	3504628	2925900	2925900
December 2019	925732	2021354	2021354
<b>TOTAL</b>	<b>25531869</b>	<b>66417645</b>	<b>56768325</b>
Total value of supply	91949514		

9. It is seen that in the show cause notice the turnover value of zero rated supply of goods was taken as Rs.3,82,97,803/- which I find is equal to 1.5 times of taxable value of outward supply of goods (other than zero rated) of Rs.2,55,31,869/-. Apparently in terms of amended definition of "Turnover of zero-rated supply of goods", the turnover value of zero rated supply of goods was taken as 1.5 times the value of like goods domestically cleared by the appellant, since such value was found to be lesser than the value of zero-rated supply of goods made during the relevant period without payment of tax. It also transpires that the nature of goods supplied for zero rated supply and in domestic market are considered as 'like goods' within the amended definition of "Turnover of zero-rated supply of goods". However, there is no change in adjusted total turnover taken by the appellant and the adjudicating authority which remain same at Rs.9,19,49,514/-. Similarly as against Net ITC of Rs.4780903/- the adjudicating authority has considered net ITC of Rs.42,44,036/- as shown in Annexure B as eligible ITC, by the appellant. Accordingly applying the formula prescribed under Rule 89 (4) of CGST Rules, 2017 the admissible refund is re-calculated at Rs. 17,67,679/-.  $(38297803 / 91949514 \times 4244036)$ .

10. I find that in the matter relating to determination of admissible refund as per Rule 89 (4) of CGST Rules, 2017 inserted vide Notification No.16/2020- CT dated 23-3-2020, CBIC has issued Circular No. 147/03//2021-GST dated 12-3-2021, wherein it was clarified as under :

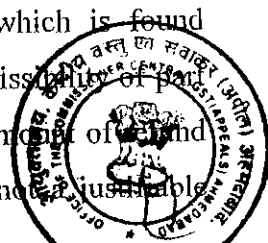
*It is noticed that "Adjusted Total Turnover" includes "Turnover in a State or Union Territory as defined in Section 2(112) of CGST Act. As per Section 2(112), "Turnover in a State or Union Territory" includes turnover/ value of export/ zero-rated supplies of goods.*



"Turnover of zero-rated supply of goods" has been amended vide Notification No.16/2020-Central Tax dated 23.03.2020, as detailed above. In view of the above, it can be stated that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", need to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule 89. Thus, the restriction of 150% of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "Adjusted Total Turnover" in Rule 89 (4) of the CGST Rules, 2017. Accordingly, it is clarified that for the purpose of Rule 89(4), the value of export/ zero rated supply of goods to be included while calculating "adjusted total turnover" will be same as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in the said sub-rule.

11. As per the above clarification, for determining the admissible refund as per formula, in cases where the 1.5 times value of domestic supply of goods was taken as turnover of zero rated supply, the same value should be taken for arriving the adjusted turnover of goods. A illustrative example was also given for determining the admissible refund amount as per above clarification. In this case the turnover of zero rated supply of goods was taken as Rs.3,82,97,805/- which is 1.5 times of value of like goods domestically supplied by the appellant. However, the adjusted total turnover is taken as Rs.9,19,49,514/- as per refund application, taking into account actual value of zero rated supply plus value of domestic and other supplies as per table above, which I find is not in accordance with the above Circular. As per Circular, in this case for the purpose of determining adjusted total turnover, 1.5 times of value of domestically supplied goods need to be taken towards turnover of zero rated supplies made without payment of tax plus value of domestic supply and other supplies made during the claim period. Regarding net ITC of Rs.4244036/- considered by the adjudicating authority, I find that the adjudicating has rightly taken net ITC of Rs.4244036/- which is shown as eligible ITC in Annexure B. Therefore I find that admissible refund recalculated at Rs. Rs. 17,67,679/- taking into account the adjusted turnover at Rs.9,19,49,514/- is incorrect and not in accordance with the above Circular.

12. I further notice that appellant has not filed any reply to the show cause notice till the date of issuance of impugned order but filed reply on dated 21-8-2020 ie after issuance of impugned order. In the present appeal also no submission was made by the appellant challenging re-determination of claim amount other than contending that they had complied with Notification No.16/2020 and claimed refund as per above Notification. However, it also emerge that admissibility of refund under Section 54 of CGST Act 2017 is not disputed but the admissible claim amount was reduced to Rs.17,67,679/- only. Rule 92 of CGST Rules 2017 envisage sanction of refund in part which is found to be admissible and reject the part amount which is found inadmissible. Therefore, in the subject case, even if no reply was filed by the appellant, the adjudicating authority ought to have sanctioned refund of Rs.17,67,679/- which is found admissible rather than rejecting the entire claim amount on the ground of inadmissibility of part of claim amount. I find decision of adjudicating authority rejecting the entire amount of refund even after re-calculating the admissible refund amount at Rs.17,67,679/-, is not justifiable.



decision and also in violation of governing provisions of CGST Rules, 2017. Regarding compliance to Notification No.49/2019, the appellant submitted that they had claimed ITC as are reflected in GSTR2A only.

13. In view of above, I find that there is lapse on the part of adjudicating authority in not sanctioning the admissible refund amount. Since the refund is held admissible on merit, I hold that admissible refund amount needs to be determined in accordance with Circular 147/03//2021-GST dated 12-3-2021 and sanctioned to the appellant. Accordingly I set aside the impugned order and allow this appeal restoring the appellant's entitlement for admissible refund.

अपील कथद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।


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

  
Mihir Rayka

Additional Commissioner (Appeals)

Date :

Attested

  
(Sankar Raman B.P.)  
Superintendent  
Central Tax (Appeals),  
Ahmedabad  
By RPAD

To,  
Shri Balkishan Kashiprasad Bajaj  
of M/s. Balaji Trading Company,  
22, Nutan Cloth Market,  
O/S Raipur Gate,  
Ahmedabad 380 022

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division I (Rakhial) Ahmedabad
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- ✓ 6) Guard File
- 7) PA file

