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

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DIN-20220364SW000005880A

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2676/2021 -APPEAL /7239-42

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-156/2021-22**
दिनाँक Date : **28-03-2022** जारी करने की तारीख Date of Issue : **29-03-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZS2410210191167 DT. 14.10.2021** issued by Assistant Commissioner, Division VIII, Ahmedabad South

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

M/s. U Square Lifescience Pvt. Ltd., A 1101-03, Solitaire Corporate Park, Beside Divya Bhaskar, SG Road, Ahmedabad-380051

(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) **Full amount of Tax, Interest, Fine, Fee and Penalty** arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to **twenty five per cent** 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 वेबसाइटwww.cbic.gov.in 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 www.cbic.gov.in.

ORDER IN APPEAL

M/s.U Square Lifescience Pvt.Ltd., A 1101-03, Solitaire Corporate Park, Beside Divya Bhaskar, SG Road, Ahmedabad 380 051 (hereinafter referred to as `the appellant) has filed the present appeal on dated 1-11-2021 against Order No.ZS2410210191167 dated 14-10-2021 (hereinafter referred to as `the impugned order) passed by the Assistant Commissioner, Division VIII, Ahmedabad South (hereinafter referred to as `the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN24AAACU8986A1Z9 has filed refund claim for Rs. 21,25,318/- for refund on account of export of goods for the month of July 2021. The appellant was issued show cause notice Ref No. ZQ2410210040378 dated 4-10-2021 proposing rejection of refund to the extent of Rs.7,90,076/- on the following reasons :

As per Para 47 of Circular No.125/44/2019-GST dated 18-9-2019 - "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 I bill of export should beexamined and the lower ofthe two values should be taken into account while calculating the eligible amount of refund"

2. On verification of the refund claim it has been observed that the tax payer has taken the value of zero rated turnover as the value of invoices (Rs.2,52,56,964) instead of lower of the two values between shipping bill value (FOB of Rs.2,36,18,215 and invoice value ie Rs2,52,56,964/-

Further as per Rule 89 of CGST Rules, 2017

"Net ITC" means input tax credit availed on inputs and input services during the relevant period other than input tax credit availed for which refund is claimed under sub rules (4A) or (4B) or both and relevant period means the period for which the claim has been filed.

It is also observed that the tax payer has taken some ITC in Annexure B of Rs.7,07,695/- for the irrelevant period. As per Rule 89, Net ITC for the relevant period ie as per this claim for July 2021 should be of Rs.14,28,102/- (as per Annexure B and GSTR2A for the month of July 2021).

Now the revised calculation for maximum refund is as under :

3. The refund amount as calculated in the above table comes to Rs.13,35,242/- but the taxpayer has claimed Rs.21,25,318/-. Hence the tax payer has claimed Rs.7,90,076/- in excess.

3. The adjudicating authority vide impugned order held that refund of Rs.7,90,076/- is inadmissible and refund of Rs.13,35,242/- is to be paid to be paid to the appellant on the basis of charges raised in the show cause notice. Accordingly adjudicating authority sanctioned refund of Rs.13,35,242/- and rejected refund of Rs.7,90,076/-.

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

The impugned order confirming rejection on the ground that FOB value is to be considered as zero rated turnover and that too only in numerator, ignoring the provisions of Section 15 of CGST Act and Rules made thereunder and Board Circulars and without reference to any of the provisions of Law is void-ab-initio and liable to be set aside ;

That the impugned order was passed without providing opportunity of being heard and without following the principles of natural justice ;

In terms of Section 15 of CGST Act read with Section 7 of CGST Act, 2017 they had rightly considered transaction value mentioned in the invoice for computation of refund under Rule 89 of CGST Rules ;

That as per Circular No.37/11/2018-GST dated 15-3-2018 and Circular No.125/44/2019-GST dated 18-11-2019 in case of zero rated supplies the value of supply shall be invoice value which is governed under Section 15 of CGST Act 2017 ; as per Section 15 (2) of GST Act 2017 incidental expenses before delivery of goods shall form part of value of such supply; as per Section 2 (30) of CGST Act, 2017 supply of goods on CIF basis where the freight and insurance are also arranged by the exporter is considered as composite supply of goods and services. The appellant has also referred to GAQ 16 of Commissioner of Customs, Export, Chennai IV Public Notice No.8/2018 dated 23-2-2018 ; that the adjudicating authority has made fatal attempt to restrict the refund claim by drawing absurd interpretation of the Circular and restricting the value of zero rated supply to FOB value which is nowhere mentioned in the Circular also. Thus it is amply clear that there is no provision in the Law requiring the exporter to restrict the value of zero rated supply under Rule 89 of CGST Rules to FOB value ignoring the provisions of Section 15 of CGST Act. Accordingly they had rightly considered the transaction value for computing refund under Rule 89 of CGST Rules and impugned order confirming the rejection of refund is liable to be seta aside.

That SCN for disallowing refund claim on the same ground has been issued to them for earlier period but the sanctioning authority has allowed refund to them; that the Department cannot blow hot and cold simultaneously by accepting their submission for refund claim for one period and disallowing refund for subsequent period ; They referred to the decision of Hon'ble Tribunal in the case of M/s.Sun Polytron Industries Ltd Vs CCE, Vapi (2009 (238)ELT 380 (Tri). Referring to various decision of Hon'ble Supreme Court the appellant contended that when the Department has not challenged the OIO in their own case on the same issue, it could not now argue against the OIO.

That the method of computation of refund under SCN is incorrect and refund was rejected without considering the formula given under Rule 89 of CGST Rules, 2017 ; that the impugned Order has not appreciated the submissions made by them and provisions of Section 15 and has confirmed the computation of value of zero rated supply which has been arrived on the basis of FOB value declared in the shipping bills and not appreciated para 4 of CBIC Circular NO.147/03/2021-GST dated 12-3-2021 as per which the value of zero rated supply to be considered in numerator and denominator as mentioned in the formula prescribed under Rule 89 (4) should be same and there cannot be different criteria for computing numerator and denominator and 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; the impugned OIO is conspicuously silent on this and has not even made an attempt to provide the reason for not considering the adjusted turnover as per clarification provided in the above Circular and has simply rejected the refund claim ; that they fail to understand as to why the adjudicating authority has decided to

consider FOB value in numerator for computing refund and why value of zero rated supply is arrived at on the basis of values reported in GST returns ; that the provisions of Law is same and cannot change for computing numerator and denominator for the same refund claim ; that refund amount computed for rejection in SCN is void and impugned order confirming rejection of refund is liable to be quashed.

That the refund claimed is within limit even if refund is computed considering FOB value. The refund amount computed considering the transaction value reported in GSTR1 and GSTR3B as per Statement 3 and Statement 3A is Rs.21,35,476/- where refund claimed by the claimed is Rs.21,25,318/- ; that their export turnover is more than 99.5% and thus the change in numerator and denominator (from CIF to FOB) would not have any impact on refund as the ratio would remain the same ; that even if refund amount is computed considering the above referred Circulars, the same under no circumstance can be reduced and rejected as being proposed under the SCN and confirmed vide impugned OIO.

The ITC taken in GSTR3B is not disputed in the SCN but the SCN has reduced the ITC from Annexure B alleging that the appellant has taken some ITC in Annexure B of the irrelevant period ; that the SCN has referred to Rule 89 and mentioned that as per Rule 89 Net ITC of relevant period ie as per this claim of July 2021 should be Rs.14,28,102/- as per Annexure B and GSTR2A ; that as per Rule 89 relevant period means the period for which claim has been filed ie July 21 and net ITC means ITC availed on inputs and input service during relevant period ie. July 2021; that the ITC of tax paid under Section 9 (3) and 5 (3) of CGST Act respectively is also included in the definition of input/input services ; that in the SCN it was alleged that ITC taken by them is not for relevant period without any basis of provisions of the Law and this renders the whole SCN as vague ; further SCN has also not considered ITC of tax paid under RCM of July 2021 on its own and has not provided any reasons for the same ; this rendered the whole SCN as vague and the same is liable to be quashed ; that as per Section 16 of CGST Act, 2017 ITC can be taken any time after complying with the conditions of Section 16and such ITC can also be taken in subsequent tax period upto September of next financial year or filing of annual return whichever is earlier. Referring to CBIC Circular No.125/44/2019-GST dated 18-11-2019 the appellant contended that they had rightly taken ITC inGSTR3B of July 2021 of invoices which are dated prior to July 2021 on the basis of such invoices appearing in GSTR2A in accordance with restrictions prescribed in Rule 36 (4) vide Notification No.49/2019-CT dated 9-10-2019 and that they had only followed the provisions of Rule 36 (4) as mandated by the Law and by disallowing refund the adjudicating authority has raised a question mark against Rule 36 (4) as well as Board Circular ; that ITC taken by them is also in accordance with provisions of Section 16 of CGST Act and the same is also clarified in the Circular dated 18-11-2019 and the same is rightly considered as net ITC under Rule 89 while computing refund for July 2021 and accordingly SCN reducing the net ITC taken on invoices dated prior to July 2021 considering the same as ITC of irrelevant period if void ab initio and impugned OIO confirming the same is liable to be quashed.

That they had availed ITC in GSTR3B on the basis of invoices appearing in GSTR2A in accordance with Section 16 of CGST Act read with Rule 36 (4) of CGST Rules read with

Notification NO.49/2019-CT dated 9-10-2019 read with CBIC Circular NO.135/05/2020-GST dated 31-3-2020 and hence rightly computed net ITC for arriving refund amount.

That the Board's Circular and their right interpretations are binding on the Department and raising of demand/rejection of refund referring partially to a trivial line of Circulars with a view to just reject the refund is not just and proper and is against the true spirit of the Circular and the implementation of Circulars needs to be proper perspective for which it stands. They referred to decision of Hon'ble Supreme Court in the case of State of Kerala Vs Kurian Abraham Pvt.Ltd. and other related case laws.

The SCN is vague as the SCN has not referred to any provisions of CGST Act, IGST Act while proposing to reject the refund claim rendering the SCN as vague; that the SCN has been issued without providing the basis, as to why FOB value should be considered as zero rated value and simply proposed to disallow quoiting para 47 of CBIC Circular No.125/44/2019-GST dated 18-9-2019. The appellant relied on case law of M/s.SBI Capital Markets Ltd Vs CCEX & ST (LTU) Mumbai (2016 (41) STR 76 (Tri.Mumbai) ; Indian Oil Corporation Ltd Vs CCE Chennai (2016 (343) ELT 405(Tri.Chennai) which was affirmed by Hon'ble Madras High Court (2017 (354) ELT 585 (Mad) and contended that SCN issued has not referred to the provision under which claimant is required to claim refund on FOB value and not on transaction value ; the SCN has also not provided the reasons for not computing adjusted total turnover as per CBIC Circular No.147/03/2021-GSTdated 12-3-2021 but simply referred to para 47 of CBC Circular No.18-11-2019 for computation of refund.

The impugned order was passed without considering the facts and without giving any justification is therefore a non speaking order and liable to be set aside ; that the impugned order has not even referred to any of the provisions of CGST Act or Rules and ignored CBIC Circular clarifying the very same issued which has been raised in the SCN. The appellant relied on various case laws.

The impugned order was passed without conducting proper personal hearing ; that they should have been given proper opportunity to present their case without personal hearing before adjudication of the matter ; that the conduct of personal hearing is one of the basic pillar of principle of natural justice and any adjudicating process done without following the process of natural justice renders the whole process as void ab inito. The appellant relied on various case laws.

In view of above submissions the appellant pray to set aside the impugned order to the extent upholding the disallowance of refund claim and requested to hold that refund of tax should be computed on the basis of transaction value mentioned in the invoices and not on the basis of FOB value ; ITC taken in GSTR3B I net ITC as per Rule 89 ; refund should be computed on the basis of statutory formula prescribed under Rule 89 ; even in case refund is computed on the basis of FOB value, the value of export/zero rated supply f goods to be included while calculating adjusted total turnover will be same as being determined as per amended definition of turnover of zero rated supply of goods ; refund claimed by them is correct and should e approved ; Board' circulars are binding on the Department and the refund claim should be processed on the basis of all Board Circulars and the same cannot be followedd partially.

5. Personal hearing was held on dated 8-3-2022. Shri Gopal Krishna Laddha, authorized representative appeared on behalf of appellant on virtual mode. He stated that he has nothing more to add to their written submission till date in both the appeals. However, the appellant made additional submissions wherein they reiterated the submissions made in grounds of appeal.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that in this case appeal was filed against impugned order wherein the refund amounting to Rs. 7,90,076/- was held inadmissible and rejected by the adjudicating authority. I further notice that the adjudicating authority referring to para 47 of the Circular No. 125/44/2019-GST dated 18.11.2019 has taken the turnover of zero rated supply of goods at Rs.2,36,18,215/-; adjusted total turnover at Rs.2,52,60,749/- and Net ITC at Rs.14,28,102/- and thus arrived the admissible refund amount at Rs.13,35,242/-. For better appreciation of facts I reproduce Para 47 of Circular No.18-11-2019 as under :

47. It has also 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 meant 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. 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 taken into account while calculating the eligible amount of refund.

7. The aforesaid Circular clearly clarify that in case of claim made for refund of unutilized ITC on account of export of goods where there is difference in value declared in tax invoice ie transaction value under Section 15 of CGST Act, 2017 and export value declared in corresponding shipping bill, the lower of the two value should be taken into account while calculating the eligible amount of refund. In the subject case, I find that invoice value (transaction value) of goods cleared for export during the relevant month was Rs. 2,52,56,964/- whereas FOB value as per shipping Bill was Rs.2,36,18,215/-. Accordingly, as per aforesaid Circular the FOB value of goods which is lower among the two values need to be taken into account for determining admissible refund amount. Therefore, I find that the adjudicating authority has correctly taken FOB value of goods as turnover of zero rated supply of goods for determining the admissible refund amount which is in accordance with the above Circular. Consequently, submission made by the appellant that they had rightly considered the transaction

value as per Section 15 of CGST Act, 2017 for computing refund is devoid of any merit and not sustainable.

8. However, I find that the appellant referring to para 4 of CBIC Circular NO.147/03/2021-GST dated 12-3-2021 contended that value of zero rated supply to be considered in numerator and denominator in the formula prescribed under Rule 89 (4) of CGST Rues, should be the same and there cannot be different criteria for computing numerator and denominator ie for the value of turnover of zero rated supply of goods in the formula. I find force in the appellant's contention. In this regard I refer to para 4 of above Circular providing clarification as under :

4. The manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules, 2017.

4.1 Doubts have been raised as to whether the restriction on turnover of zero-rated supply of goods to 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, imposed by amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dated 23.03.2020, would also apply for computation of "Adjusted Total Turnover" in the formula given under Rule 89 (4) of CGST Rules, 2017 for calculation of admissible refund amount.

4.2 Sub-rule (4) of Rule 89 prescribes the formula for computing the refund of unutilised ITC payable on account of zero-rated supplies made without payment of tax. The formula prescribed under Rule 89 (4) is reproduced below, as under:

"Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷Adjusted Total Turnover"

4.3 Adjusted Total Turnover has been defined in clause (E) of sub-rule (4) of Rule 89 as under:

"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.'

4.4 "Turnover in state or turnover in Union territory" as referred to in the definition of "Adjusted Total Turnover" in Rule 89 (4) has been defined under sub-section (112) of Section 2 of CGST Act 2017, as: "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"

4.5 From the examination of the above provisions, 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. The definition of "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.

4.6 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.

9. I find that as per definition of adjusted total turnover, defined in clause (E) of sub-rule (4) of Rule 89, the adjusted total turnover includes value of all outward supplies of goods and services made during the relevant period including zero rated (export) supply of goods but exclude value of inward supplies which are liable to reverse charge. Thus, in the formula prescribed under Rule 89 (4) of CGST Rules the value of zero rated turnover of goods comes at numerator as well as in total adjusted turnover at denominator. As per clarification issued vide Circular No.147/03/2021, the value taken for turnover of zero rated supply of goods taken at numerator as per clause (C) of Rule 89 (4) need to be taken as value of zero rated supply of goods in adjusted total turnover in the formula. In other words, turnover value of zero rated supply of goods at numerator and turnover value of zero rated supply in total adjusted total turnover at denominator will be same.

10. In the subject case, the appellant has filed refund claim taking into account turnover of zero rated supply at Rs.2,52,56,964/- being invoice value(transaction value) of export goods ; adjusted turnover at Rs. 2,52,60,749/- and Net ITC at Rs.21,35,797/-. The value taken by the appellant towards adjusted total turnover was not disputed by the adjudicating authority. On scrutiny of GSTR3B return for the month of July 2021 I find that the appellant has made outward supplies (other than zero rated) of Rs.3785/- ; zero rated outward supply valued at Rs.2,52,56,964/- and inward supplies (liable to reverse charge) of Rs.8,51,707/-. However the adjudicating authority has considered turnover value of zero rated supply at Rs.2,36,18,215/- being FOB value of export goods but considered adjusted total turnover as per value shown in

GSTR3B returns ie Rs.2,52,60,749/- (Rs.2,52,56,964/- + Rs.3,785/-). Apparently, the adjudicating authority has considered FOB value of export goods for arriving turnover of zero rated supply of goods but considered the invoice value of zero rated supply of goods for arriving total adjusted turnover. This has resulted in adopting two different values as turnover of zero rated supply of goods which I find is not in consonance with the clarification issued vide above Circular. Therefore, as per above Circular in this case the FOB value of export goods taken for turnover of zero rated supply of goods need to be taken for turnover of zero rated supply of goods for arriving total adjusted turnover in the formula and not the value shown in GSTR3B returns.

11. I further find that the adjudicating authority has considered net ITC at Rs.14,28,102/- as against Net ITC of Rs.21,35,797/- taken by the appellant. The reason adopted by the adjudicating authority is that the as per Rule 89, ITC for the relevant period ie. for the month of July 2021 only need to be considered for arriving Net ITC. On scrutiny of Annexure B filed with the claim I find that the appellant has availed ITC on invoices issued during the period prior to July 2021 but the adjudicating authority has considered ITC availed under invoice issued during July 2021. In this regard I refer to definition of Net ITC and relevant period given under Rule 89 (4) as under :

Rule 89 (4) (B) of CGST Rules, 2017 as amended
(a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both
(F) "Relevant period" means the period for which the claim has been filed.

12. Concurrent reading of meaning assigned to Net ITC and relevant period leads to the expression that ITC means input tax credit availed on inputs during the period for which claim has been filed other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both. Thus, use of word `availed' indicate that total credit taken on inputs during the claim period is to be taken under head ITC for determination of refund amount for that period. In other words the meaning of net ITC and relevant date allows all eligible input credit taken during the claim period irrespective of date and period of invoices for arriving Net ITC and for determining refund amount. Therefore so long as the credit is taken validly during the claim period in accordance with provisions of GST Law and found admissible it should be taken into account for determining refund for the claim period.

13. In this regard, I refer to Board vide Circular No. 125/44/2019 - GST Dated the 18th November, 2019 wherein it was clarified as under :

61. Presently, ITC is reflected in the electronic credit ledger on the basis of the amount of the ITC availed on self-declaration basis in FORM GSTR-3B for a particular tax period. It may happen that the goods purchased against a particular tax invoice issued in a particular month, say August 2018, may be declared in the FORM GSTR-3B filed for a subsequent month, say

September 2018. This is inevitable in cases where the supplier raises an invoice, say in August, 2018, and the goods reach the recipient's premises in September, 2018. Since GST law mandates that ITC can be availed only after the goods have been received, the recipient can only avail the ITC on such goods in the FORM GSTR-3B filed for the month of September, 2018. However, it has been reported that tax authorities are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September, 2018. In this regard, it is clarified that "Net ITC" as defined in rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been "availed" when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in FORM GSTR-3B. Further, section 16(4) of the CGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2019, "availed" in September, 2019 cannot be excluded from the calculation of the refund amount for the month of September, 2019.

14. The above clarification mandate the view that ITC availed during claim period on the strength of invoices issued during the past period cannot be excluded for calculation of refund amount for the claim period and should also be considered for determining refund amount. In the subject case, there is no dispute regarding admissibility of ITC availed during the claim period or ITC availed in question are not reflected in the GSTR 2A of the appellant and only dispute is that the credit taken during claim period include invoices issued during the prior period during which the appellant has not claimed refund. In this regard I find that as per meaning assigned to Net ITC and relevant date and also on the basis of clarification issued by Board vide circular mentioned above there is no restriction under GST Law for availing ITC in a month on the strength of invoices issued during past period. I further notice that the appellant has also taken the plea that ITC of tax paid under RCM of July 2021 was also not considered. In this regard I find that there is also no restriction in availing ITC of tax paid under RCM in the definition of Net ITC. Therefore, I do not find any justification in excluding ITC of Rs.7,07,695/- on the reasoning given in the impugned order

15. Accordingly, in this case the turnover value of zero rated supply of goods taken as FOB value of export goods need to be taken in adjusted total turnover also and ITC of Rs.7,07,695/- availed on invoices issued during the prior period and on RCM payment need to be taken into account for determining the admissible refund. Accordingly, in this case the admissible refund as per formula comes to Rs.21,35,455/- as under:

Rs.2,36,18,215/-/- (Turnover value of zero rated supply of goods as per FOB value of export goods) x Rs.21,35,797 /- (Net ITC) / Rs.2,36,21,999/- (23618215 + 3784) = Rs.21,35,455/- (Admissible as per balance in electronic credit ledger Rs.21,25,318/-.

16. Regarding plea raised for non grant of personal hearing I find that personal hearing was fixed on dated 11-10-2020. However, it is not brought on record by the appellant as to whether they sought adjournment or otherwise. However, from the impugned order I find that adjudicating authority has passed the impugned order referring to reply dated 11-10-2021 filed by the appellant only. As per proviso to Rule 92 (3) of CGST Rules, 2017 no refund claim can be rejected without providing opportunity of personal hearing. In the subject case no personal hearing was conducted and hence the impugned order passed by the adjudicating authority is in violation of Rule 92 (3) of CGST Rules, 2017.

17. In view of facts of the case, submission made by the appellant and discussion made herein above, I hold that the adjudicating authority has correctly taken the turnover of zero rated supply goods based on FOB value of goods in accordance with Circular No. 125/44/2019-GST dated 18.11.2019. However, I hold that the adjudicating authority has wrongly taken the invoice value (transaction value) of turnover of zero rated supply of goods in total adjusted turnover of goods instead of considering the FOB value. Similarly ITC of Rs.7,07,695/- excluded from Net ITC is also on a wrong premise and wrong interpretation of Law. Accordingly I hold that the adjudicating authority has wrongly arrived the admissible refund at Rs.13,35,242/- and thereby rejected the refund claim amounting to Rs.7,90,076/-. Further claim amount was rejected without granting opportunity of personal hearing. Therefore, I hold that the impugned order passed by the adjudicating authority rejecting refund of Rs.7,90,076/- is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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

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

27/03/22

(Mihir Rayka)
Additional Commissioner (Appeals)

Date :

Attested

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

To,

M/s.U Square Lifescience Pvt.Ltd.,
A 1101-03, Solitaire Corporate Park,
Beside Divya Bhaskar,
SG Road, Ahmedabad 380 051

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 Additional Commissioner, Central Tax (Systems), Ahmedabad South
5) The Asst./Deputy Commissioner, CGST, Division-VIII, Ahmedabad South
6) Guard File
7) PA file