



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

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क फाइल संख्या : File No : GAPPL/ADC/GSTP/172/2022 & GAPPL/ADC/GSTP/198/2021 -APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-102/2022-23**

दिनांक Date : **30-08-2022** जारी करने की तारीख Date of Issue : **30-08-2022**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. ZU2404210349549 DATED 29.04.2021 & ZV2409210044622 DT. 03.09.2021 issued by Assistant Commissioner, Division VII, Ahmedabad South

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

**The Assistant Commissioner, CGST, Division VII, Ahmedabad South**

(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 Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the appellant) has filed the following appeals against Orders passed by the Deputy Commissioner, CGST, Division VIII, Ahmedabad South (hereinafter referred to as the adjudicating authority) sanctioning refund to M/s.JAMP India Pharmaceuticals Pvt.ltd 606 to 608, 6<sup>th</sup> Floor, Shapath V, SG Highway, Vejalpur, Ahmedabad 380 051 (hereinafter referred to as the respondent).

Sr No.	Appeal File No.	Date of filing of appeal	Impugned order No and date	Amount of refund sanctioned	Period
1	GAPPL/ADC/GSTP/198/2021	20-10-2021	ZU2404210349549/ 29-4-2021	57,40,905/-	July 2020 to September 2020
2	GAPPL/ADC/GSTP/172/2022	10-2-2022	ZV2409210044622/ 3-9-2021	64,07,960/-	October 2020 to December 2020

2. Briefly stated the fact of the case is that the respondent registered under GSTIN 24AAECJ1198H1ZK has filed refund claim on account of ITC accumulated due to export without payment of tax under Section 54 (3) of CGST Act, 2017. After verification of the claim the adjudicating authority vide impugned orders sanctioned refund to the respondent. During review of said claim it was observed that the higher amount of refund has been sanctioned to the respondent what is actually admissible to them in accordance with Rule 89 (5) of CGST Rules, 2017 read with Section 54 (3) of CGST Act, 2017. The respondent has shown adjusted total turnover in their refund application which was less than the adjusted total turnover as per GSTR3B returns. Thus taking the actual value of adjusted total turnover, applying the formula for refund of export without payment of tax the admissible refund comes less than the sanctioned amount and thereby the adjudicating authority has sanctioned excess refund to the respondent. The details are as under :

Period	Adjusted total turnover as per refund application	Adjusted total turnover as per GSTR3B	Net ITC	Zero rated turnover	Refund sanctioned	Refund admissible	Excess refund sanctioned
July to Sept.20	99777693	115109892	5907515	96963659	5740905	4976238	764667
Oct to Dec 20	117279852	149873696	6891996	109043094	6407960	5014386	1393574

3. In view of above, the appellant filed the present appeal on the following grounds:



- i. The adjudicating authority has erred in passing the refund order as higher amount of refund has been sanctioned to the respondent than what is actually admissible under Rule 89 (5) of CGST Rules, 2017 read with Section 54 (3) of CGST Act, 2017.

The respondent has shown adjusted total turnover by considering zero rated turnover as per export invoice and local turnover. However as per GSTR3B returns for the period July 2020 to September 2020 and October to December 2020 the respondent has exported goods/services valued at Rs.11,22,95,858/- and Rs.14,16,36,938/- and supplied goods/services locally valued at Rs.28,14,034/- and Rs.82,36,758/- and thus adjusted total turnover comes to Rs.11,51,09,892/- and Rs.14,98,73,696/- respectively.

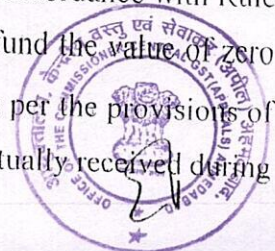
As per definition of turnover in State or turnover in Union Territory referred to the definition of 'adjusted total turnover' as per Rule 89 (4) of CGST Rules, 2017 defined in Section 2 (112) of CGST Act, 2017, the taxable value should be taken as per Section 15 of CGST Act, 2017. The respondent has declared the export value in GSTR3B returns for the period July to September 2020 as Rs.11,22,95,858/- and Rs.14,16,36,938/- for the period October 2020 to December 2020 which should be taken while calculating the adjusted total turnover.

Thus the adjudicating authority has erred in passing the refund order as higher amount of refund has been sanctioned to the respondent taking lower value of adjusted total turnover, thereby excess refund was has been given, which is required to be recovered along with interest.

In view of above grounds the appellant filed the present appeals to set aside the impugned orders and to pass order directing the original authority to demand and recover refund erroneously sanctioned to the respondent with interest and to pass any other order as deem fit in the interest of justice.

4. Personal hearing was held on dated 29-7-2022. No one appeared on behalf of appellant. Shri Pratik Trivedi, authorized representative appeared on behalf of the respondent on virtual mode. He has been given seven working days for making additional submissions. Accordingly, the respondent vide letter dated 28-7-2022 filed cross objection as under:

5. During the claim period they have received advance for zero rated supply and raised invoices of supply of services which are completed and also for domestic supply of services. At the time of issuance of invoice the value of foreign currency is converted at the prevailing rate of RBI at relevant time. Such method of determining the value of supply is in accordance with Rule 34 of CGST Rules, 2017. However, for the purpose of working out the refund the value of zero rated supply of services and adjusted total turnover are to be worked out as per the provisions of Rule 89 (4) of CGST Rules, 2017. Accordingly in their case the payments actually received during



the claim period in accordance with the methodology/formula of Rule 89 (4) of CGST Rules, 2017 is worked out by them and invoice detailed working thereof have also been submitted along with refund application. In view of above, the value of zero rated supply of services and adjusted total turnover as per refund application and amount of refund sanctioned to them is correct and free from any error. That the appeal proposing to reject refund claim considering adjusted total turnover value is grossly incorrect and illegal and the same should be set aside. In view of above submissions the respondent requested to set aside the appeal. The respondent has also submitted reconciliation statement and statement showing turnover of zero rated supply of services and adjusted total turnover arrived by them.

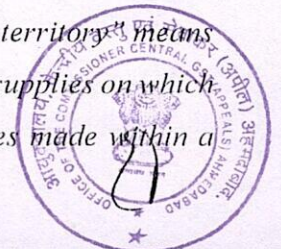
6. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the respondent and documents available on record. In these appeals the respondent has claimed refund of ITC on account of zero rated supply of services. The dispute is with regard to value taken for adjusted total turnover for arriving the admissible refund and that there is no dispute with regard to turnover of zero rated supply of goods/services and Net ITC. The appellant has taken the stand that the adjusted total turnover should be the value shown in GSTR3B returns whereas the respondent has taken the value of zero rated supply of services determined in terms of Rule 89 (4) of CGST Rules, 2017 and value domestic supply of services made during claim period towards adjusted total turnover.

7. I find that 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,

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

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.’*

“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”*

8. In view of above, for the purpose of determining admissible refund under Rule 89 (4) of CGST Rules, 2017, the adjusted total turnover includes values of all outward supply of goods/services including zero rated supply of goods/services except supplies exempted therein. Thus, in the formula prescribed under Rule 89 (4) the value of zero rated supply of goods/services reflects in turnover of zero rated supply of goods/services, at numerator as well as in adjusted total turnover at denominator. In case of zero rated supply of services the turnover of zero rated supply of services is to be determined as per clause (D) of Rule 89 (4) and the definition of adjusted total turnover also envisage to include this value for arriving adjusted total turnover. As per clause (D), turnover of zero rated supply of services is *the aggregate of payment 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 less advances received for zero rated supply of services for which supply of services has not been completed during the relevant period*. Thus, for the purpose of refund on account of zero rated supply of services, the turnover of zero rated supply of services is to be determined by aggregating the payment received during the relevant period for zero rated supply of services plus advance amount received for supply of services completed during relevant period minus advance received for which supply of services was not completed during the relevant period.


9. As per documents submitted by the respondent I find that during the claim period July 2020 to September 2020, I respondent has received an amount of Rs.11,22,95,858/- towards zero rated supply of services and shown this amount in their GSTR3B returns in terms of Section 13 of CGST Act, 2017 along with value of non zero rated supply of services (domestic supply) of Rs.28,14,034/-, totalling Rs.11,51,09,892/-. Similarly for the claim period October 2020 to December 2020, the respondent has received an amount of Rs.20,77,15,838/- towards zero rated supply of services and shown this amount in their GSTR3B returns in terms of Section 13 of CGST Act, 2017 along which value of non zero rated supply of services (domestic supply) for Rs.82,36,758/-, totalling Rs.21,59,52,596/-. However, as per respondent's contention the turnover of zero rated supply of services in terms of clause (D) of Rule 89 (4) comes to Rs.9,69,63,659/- and Rs.10,90,43,094/- for the respective quarter period ie aggregate of amount received for zero rated supply of services plus advance received for supply of services made during the claim period minus advance amount received against which supply of services was not completed during the claim period and they had taken these value towards turnover of zero rated supply of services and for arriving adjusted total turnover. As per definition of 'adjusted total turnover' the turnover of zero rated supply of services determined as per clause (D) will form part of adjusted total turnover. Accordingly in the subject case I find that turnover of zero rated supply of services of Rs.9,69,63,659/- and Rs.10,90,43,094/- determined as per clause (D) need to be taken in the

adjusted total turnover and not the amount of Rs.11,51,09,892/- and Rs.21,59,52,596/- taken in appeal. I find that the respondent in their refund application has taken Rs.9,69,63,659/- and Rs.10,90,43,094/- towards turnover of zero rated supply of goods and by adding value of domestic supply of services arrived the adjusted total turnover which I find is factually correct and in consonance with the definition of turnover of zero rated supply of services and adjusted total turnover. I further find that the appellant has taken GSTR3B value towards adjusted total turnover which comprise total amount received for zero rated supply of services plus value of domestic supply of services. However, turnover of zero rated supply of services was taken as arrived by the respondent which apparently is the value determined in terms of clause (D) of Rule 89 (4). This result in adoption of two different values for same zero rated supply of services which I find is not a correct and logical method for arriving admissible refund.. Therefore, I am of the view that the same of value of zero rated supply of services taken towards turnover of zero rated supply of services need to be taken towards value of zero rated supply of services in adjusted total turnover also. Further definition of turnover of zero rated supply of services and adjusted total turnover does not anywhere specify to take total amount received for zero rated supply of services towards turnover of zero rated supply of services and adjusted total turnover. Accordingly, I find that admissible refund and consequent excess/erroneous refund arrived in appeal is by way of wrong adoption of adjusted total turnover and wrong determination taking into account different values towards turnover of zero rated supply of services. Therefore, grounds made in appeal alleging excess sanction of refund is not in accordance with statutory provisions and not legally sustainable.

10. In view of above facts, I do not find any infirmity in the impugned orders passed by the adjudicating authority sanctioning refund claimed by the respondent. I further find that there is no merit or legality in present appeals so as to set aside the impugned orders and to order for recovery of excess/erroneous refund sanctioned to the respondent on the grounds mentioned in appeals. Accordingly, upheld the impugned orders and reject the appeals filed by the appellant.


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

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

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date :  
Attested

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

By RPAD  
To,  
The Assistant Commissioner,



CGST, Division VII,  
Ahmedabad South.

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) M/s.JAMP India Pharmaceuticals Pvt.ltd 606 to 608, 6<sup>th</sup> Floor, Shapath V, SG Highway, Vejalpur, Ahmedabad 380 051
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- ✓ 6) Guard File
- 7) PA file



