



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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क फाइल संख्या : File No : GAPPL/ADC/GSTD/183/2021 & GAPPL/ADC/GSTD/194/2021 -APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-103/2022-23**  
 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. **ZQ2404210170572 dated 14.04.2021 & ZZ2408210233809 dated 17.08.2021** issued by Assistant Commissioner, Division VIII, Ahmedabad South

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

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

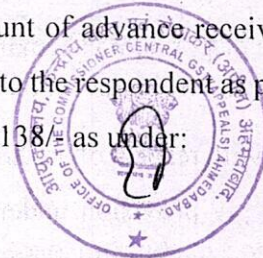
(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed 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 VIII, Ahmedabad South (hereinafter referred to as the appellant) has filed two appeals on dated 12-10-2021 and 26-10-2021 offline in terms of Advisory No.9/2020 dated 24-9-2020 issued by the Additional Director General (Systems), Bangaluru against Order No.ZQ2404210170572 dated 14-4-2021 and No.ZZ2408210233809 dated 17-8-2021 (hereinafter referred to as impugned orders) passed by the Assistant Commissioner, CGST, Division VIII, Ahmedabad South (hereinafter referred to as the adjudicating authority) sanctioning refund to M/s.SPML Infra Limited 405, Kataria Arcade, SG Highway, Ahmedabad 380 051 (hereinafter referred to as the respondent).

2. Briefly stated the fact of the case is that the respondent registered under GSTIN No.24AADCS2469K1Z5 has filed refund claim for Rs.1,80,24,608/- under ARN No.AA2403210901260 dated 24-3-2021 and for Rs.1,94,04,852/- under ARN NO.AA240821080979P dated 17-8-2021 for refund of ITC accumulated due to inverted tax structure under Section 54 (3) of CGST Act, 2017 for the month of September 2019 and October 2019. After verification, the adjudicating authority vide impugned orders sanctioned refund to the respondent. During review of said refund claim it was observed that higher amount of refund has been sanctioned to the respondent than what is actually admissible to them in accordance with Rule 89 (5) of CGST Rules, 2017. It is further observed that the respondent has not included the amount of advances received during the tax period in the amount of 'turnover of inverted supply of goods and services' as well as the amount of 'adjusted total turnover' for the calculation of refund amount. Also they have not included the amount of tax payable on such advances received in the value of 'tax payable on such inverted rated supply of goods and services'. The amount of advances received by them have already been entered into their books of account and has been declared in GSTR3B returns filed for the respective months. The respondent has shown advance received of Rs.13,39,28,571/- and Rs.6,69,64,286/- and also made payment of applicable GST of Rs.1,60,71,428/- and Rs.80,35,714/- on the amount of advances received by them in GSTR3B return for the said tax period. Therefore as per Section 13 (2) (b) of CGST Act, 2017, the said advances received should be treated as supply and the said advances in turn should be added in both the turnover of inverted rated supply of services and adjusted total turnover and accordingly the tax paid on said inverted supply of services (ie advance received) should also be included In the tax payable on such inverted rated supply of services for the calculation of the amount of refund available to the claimant. After adding the said amount of advance received and tax paid on the said advance, the amount of refund which is available to the respondent as per Rule 89 (5) of CGST Rules, 2017 comes to Rs.19,53,179/- and Rs.1,13,69,138/ as under:



Month	T/O inverted rated supply of goods (including advance amount)	Tax payable on such inverted rated supply of goods	Adjusted total turnover	Net ITC	Maximum refund to be claimed	Amount of refund sanctioned	Excess refund sanctioned and to be recovered
September 2019	138578729	16629448	138578729	18582627	1953179	18024608	16071429
October 2019	318314737	38197768	318314737	49566906	11369138	19404852	8035714

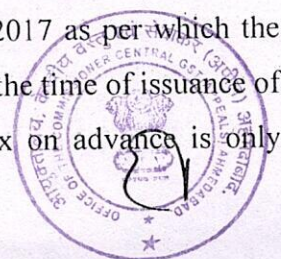
Therefore refund of Rs.1,60,71,429/- and Rs.80,35,714/- is required to be recovered along with interest from the respondent.

3. In view of above the appellant filed the present appeals on the ground that the adjudicating authority has erred in calculating the refund amount by not adding the value of advances received during the month of September 2019 and October 2019 in the inverted rated supply of services and also in adjusted total turnover and also not adding the tax paid on such advances received in the 'tax payable on inverted supply of services' as required under Section 13 (2) (b) of CGST Act, 2017. Thus the amount of Rs.1,60,71,429/- and Rs.80,35,714/- has wrongly been given as excess refund to the respondent which is required to be recovered along with interest. In view of above the appellant prayed to set aside the impugned orders wherein the adjudicating authority has erroneously sanctioned refund to the respondent and to pass an order directing the original authority to recover and appropriate the amount of refund erroneously sanctioned of Rs.1,60,71,429/- and Rs.80,35,714/- along with interest and to pass any other orders as deem fit in the interest of justice.

4. Personal hearing was fixed on dated 18-7-2022. No one appeared on behalf of appellant and respondent. Personal hearing was then held on dated 27-7-2022. No one appeared on behalf of the appellant. Shri Bhaskar Thakker and Ms Divya Ghuwalewala authorized representatives appeared on behalf of the respondent on virtual mode. They stated that they want to add additional submission for which seven working days are granted.

5. Accordingly, the respondent via email dated 8-8-2022 made additional submission as under

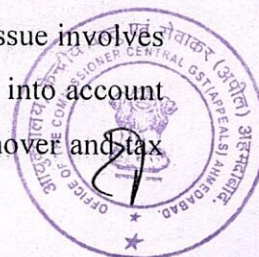
- i. The tax liability with respect of advance received is required to be discharged in accordance with time of supply provision under Section 13 (2) of GST Act, 2017 as per which the liability of the registered person to discharge the tax arises either at the time of issuance of invoices on the receipt of any payment whichever is earlier. Tax on advance is only



discharged as per the provisions of time of supply and there is no connection with the supplies made. In accordance with Section 31 of CGST Act, 2017, a registered person shall issue a tax invoice for taxable supplies made and on receipt of any advance payment for any future supply, a receipt voucher can be issued for such payment instead of tax invoice as evidencing receipt of such payment. As per Section 31 (2) and 3 (d) it is clear that any registered person shall issue tax invoice for taxable services provided and shall issue a receipt voucher when any payment has been received as an advance in relation to future supply. It is evident that supply has not been undertaken during the period when voucher is issued. It is only based on statutory requirement, GST is required to be discharged on future supply of services. In the light of above, taxable supply has not been made in respect of advance amount received and the amount received as advance is in relation to future supplies. Thus advance cannot be included in the turnover for the purpose of calculating refund in accordance with the GST provision. Inclusion of advance in GSTR3B and GSTR1 returns based on requirement specified in statute under Section 13 (2) of CGST Act, 2017 cannot be extended to refund calculation, which is in relation to unutilized input tax credit on inverted rated supply. Further in a later case when supply has also not taken place.

- ii. That there is no option to fill the details of advance amount in the offline utility available for filing refund under the category inverted duty structure. While filing refund application under the category o inverted duty structure, the tax payer has to fill the details of inward and outward supplies for the period in Statement 1A in accordance with Rule 89 (2) (h) of CGST Rules, 2017. While filing the details given in the Statement 1A there is a mandatory field as 'type of outward supply', wherein the company has to select the type of outward supply. Therein only three options are available to be selected vz. B2B, B2C Large and B2C small. There is no separate column in the statement wherein the company can fill the details of advance received during the period. There is mandatory field as 'type of document' wherein the company has to select the type of document issued in relation to supply and there are only four documents types available to be selected namely invoice, bill of entry, credit note and debit note. There is no separate column in the statement wherein the company can fill the details of receipt voucher which is issued in case of receipt of advance amount. In view of above the details of advance received cannot be filled in the given statement at the time of filing of refund application and therefore the company had to exclude the advance received amount from the total turnover and adjusted turnover while calculating the refund of inverted duty structure. In view of above submissions the respondent required to set aside the appeal.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the respondent and documents available on record. I find that in these cases the issue involves whether the amount of advance received and tax paid on the same need to be taken into account towards turnover of inverted rated supply of goods and services, adjusted total turnover and tax



payable on inverted supply of services in the formula prescribed under Rule 89 (5) for determining admissible refund. The respondent has claimed refund taking into account the value of inverted rated supply of services towards turnover of on inverted rated supply of services and adjusted total turnover and taken the tax paid on inverted rated supply of services for determining admissible refund whereas the appellant was of the view that the amount of advances received during the claim period and tax paid on the same also need to be taken into account turnover of inverted supply of services, adjusted total turnover and tax payable on inverted supply of services. The receipt of advance and tax paid on the same was not disputed by the respondent.. The grounds in appeals was made referring to Section 13 (2) (b) of CGST Act, 2017 as under :

*(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.*

*(2) The time of supply of services shall be the earliest of the following dates, namely:—*

*(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or*

*(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or*

*(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:*

7. The above sub section prescribes time of supply of services at which the liability to pay tax on service arises. Apparently in the subject cases, the respondent has paid tax on advance received by them in accordance with the above statutory provisions and shown the advance receipt and tax in their GSTR3B returns. However, I find that for the purpose of determining admissible refund under Section 54 (3) of CGST Act, 2017, the governing provisions are contained under Rule 89 (5) as under:

*Rule 89 (5) of CGST Rules, 2017:*

*(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-*

*Maximum Refund Amount = (Turnover of inverted rated supply of goods and services) x Net ITC Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.*

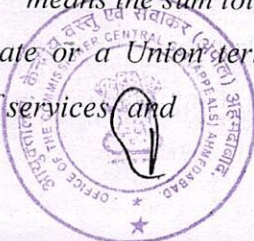
**Explanation:** - *For the purposes of this sub-rule, the expressions -*

*(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; and "Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4)*

*Rule 89 (4) (E)*

*"Adjusted Total Turnover" means the sum total of the value of-*

*(a) the turnover in a State or a Union territory, as defined under clause (112) of Section 2 excluding the turnover of services and*



*(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,*

*excluding-*

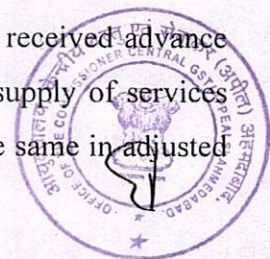
*(i) the value of exempt supplies other than zero-rated supplies; and*

*(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.]*

*Section 2 (112) of CGST Act, 2017 : "Turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess:*

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

8. Plain reading of above statutory definitions and words and expressions used therein indicate that for the purpose of determining admissible refund, the value supplies made during the relevant period and need to be taken towards adjusted total turnover and turnover of inverted supply of goods and services. Therefore, supply of services is decisive factor and eligibility to claim refund itself arise consequent to supply of services and value of such supply will only form part of turnover of inverted supply of goods and services and adjusted total turnover. Similarly, tax paid on such inverted supply of goods only need to be taken for arriving admissible refund. In the subject appeals, excess/erroneous refund was pointed out by including the advance amount and tax paid on the same in the adjusted total turnover. However, the ground in appeal is silent as to whether against the advance receipt the respondent has made supply of services during the claim period but not included the value and tax paid on such supply for arriving the admissible refund. On the other hand the receipt of advances for the services to be provided is treated as 'supply of services' during claim period in terms of Section 13 (2) (b) of CGST Act, 2017. I find that Section 13 (2) prescribes time of supply of services for payment of tax only. Section 13 (2) (b) provides that in case of provision of service, where invoice was not issued within the stipulated time period, the time of supply will be earliest date among the date of provision of services and date of receipt of payment. This statutory provision in fact envisage to charge tax at the stage of receipt of payment towards provision of services if it is received before the date of provision of service. The said sub section does not envisage that receipt of payment in advance in fact constitute supply of services at the stage of its receipt itself, unless it is proved that receipt of advances and supply of services occurred in the same month/period. In the subject appeals there is no whisper of supply of services against the advance receipt during the claim period and the ground in appeals only seek to include the advance amount in turnover of inverted rated supply and adjusted total turnover merely on the ground of its receipt and payment of tax on the same in the claim period. I do not find any rationale in this view. Merely on the ground that the respondent has received advance amount and paid tax on the same during claim period it does not constitute supply of services during claim period so as to include the amount of advance and tax paid on the same in adjusted

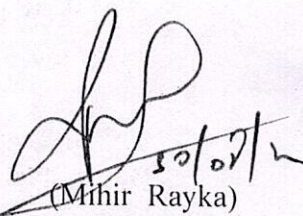


total turnover and tax payable on such inverted rated supply of goods for arriving admissible refund. Hence, the grounds made in appeal to arrive the admissible refund amount and consequent excess/erroneous refund by including advance receipt and tax paid on the same, I find is not a justifiable and sustainable ground. Accordingly, I do not find any infirmity in the impugned orders passed by the adjudicating authority sanctioning refund to the respondent so as to set aside the impugned orders and to order for recovery of erroneous/excess refund.

9. In view of above, I do not find any merit or legality in the present appeals filed by the appellant to set aside the impugned orders and to order for recovery of excess refund on the grounds mentioned therein. Accordingly, I upheld the impugned orders and reject the appeals filed by the appellant.

अपील कर्थाद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है |


10 The appeal 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 VIII,  
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.SPML Infra Limited 405, Kataria Arcade, SG Highway, Ahmedabad 380 051
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file



