



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/230/2021 -APPEAL / 3101 - 06

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-105/2022-23**
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. **ZZ2405210515962 DT. 28.05.2021** issued by Deputy Commissioner, Division IV, Ahmedabad South

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

The Assistant Commissioner, CGST, Division IV, 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) 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 वेबसाइट www.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

The Assistant Commissioner, CGST, Division IV, Ahmedabad South(hereinafter referred to as the appellant) has filed the present appeal offline on dated 18-11-2021 in terms of Advisory No.9/2020 dated 24-9-2020 issued by the Additional Director General (Systems), Bangaluru against Order No.ZZ2405210515962 dated 28-5-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, CGST, Division IV, Ahmedabad South sanctioning refund to M/s.Katex Exim Private Ltd, 55, Ashra Industrial Estate, Narol, Ahmedabad 382 405 (hereinafter referred to as the respondent).

2. Briefly stated the fact of the case is that the respondent registered under GSTN No.24AAZCS5885M1Z5 has filed refund claim for Rs.56,46,846/- for refund of ITC accumulated due to export without payment of tax. After verification the adjudicating authority sanctioned refund to the respondent. During review of 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 read with Section 54 (3) of CGST Act, 2017. It was observed that turnover of zero rated supply has been taken as Rs.5,72,51,308/- which is the invoice value of goods exported, whereas as per shipping bill FOB value the turnover of zero rated supply was Rs.5,48,13,125/-. As per para 47 of CBIC Circular No.125/44/2019-GST dated 18-11-2019 it was clarified that during processing of refund claim, the value of goods declared in 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. Thus taking the lower value of goods exports and applying the formula for refund of export without payment of tax the admissible refund comes to Rs.54,06,362/- instead of Rs.56,46,846/- sanctioned by the adjudicating authority. Thus there is excess sanction of refund of Rs.2,40,484/- to the respondent which is required to be recovered along with interest.

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

The adjudicating authority failed to consider the lower value of zero rated turnover while granting the refund claim of ITC accumulated due to export of goods without payment of tax as required under Circular NO.125/44/2019-GST dated 18-11-2019 which has resulted in excess payment of refund of Rs.2,40,484/- to the respondent. Therefore, the appellant prayed to set aside the impugned order wherein he has erroneously sanctioned refund of Rs.56,46,846/- instead of Rs.54,06,362/- under Section 54 (3) of CGST Act, 2017; to pass an order directing the original authority to demand and recover the amount erroneously refund of Rs.2,40,484/- with interest and to pass any other orders as deem fit in the interest of justice.

4. Personal hearing was fixed on dated 11-8-2022. No one appeared either on behalf of appellant or respondent. Another personal hearing was fixed on dated 23-8-2022. No one appeared on behalf of the appellant. Sri Janak Tanna authorized representative appeared on behalf of the respondent on virtual mode. He has been given seven working days to file additional reply. Accordingly on 24-8-2022, the respondent filed submission as under:



5. The value of zero rated supply as declared in invoice is transaction value as per Section 15 of CGST Act, 2017 and the same transaction value reflects in the correspondent shipping bill and considering this transaction value they have calculated the amount of zero rated supply. Section 15 of the Act says that the value of supply of goods and services or both shall be the transaction value which is the price actually paid or payable for the said supply of goods or services. For all the invoices involved in the refund application the export is made at CIF value and not the FOB value. Also the price paid or payable by the foreign buyer is the entire CIF value and not only the FOB value. According to Section 15 the value of supply is the CIF value (ie transaction value which is the price actually paid or payable for the said supply of goods or services) and not the FOB value. Moreover they had calculated the value of turnover of zero rated supply of goods in accordance with Rule 89 (4) of CGST Rules, 2017. Hence referring to Rule 89 (4) one can clearly conclude that the Rule 89 (4) nowhere speaks about FOB value to be taken while calculating the turnover of zero rated supply of goods but it only refers to the terms value and term value in CGST Act, 2017 is the transaction value which is the price actually paid or payable as per Section 15 of CGST Act, 2017. The entire para 47 of Circular No.125/44/2019 clearly talks about the value recorded in GST invoice should be the transaction value as per Section 15 of CGST Act, 2017 and the same transaction value should have been declared in shipping bill as well. The correct interpretation of the last sentence of para 47 of above Circular is that where there is any difference between the transaction value of GST invoice and the transaction value of shipping bill the lower of the two transactions value should be taken into account while calculating the eligible amount of refund. Hence para 47 nowhere bifurcates between FOB and CIF value but rather it specifically mention that the GST invoice and shipping bill should show and match at transaction value and that where there is difference between the transaction value of GST invoice and the transaction value of shipping bill the lower of the two transaction value should be taken into account while calculating the eligible amount of refund. Thus the appellant has erred at taking into considering the entire para 47 of Circular above and due to that the limited reading of only the last sentence of para 47 of Circular the interpretation in the SCN comes to be ultra vires to Section 15 of CGST Act, 2017 and Rule 89 (4) of CGST Rules, 2017. Moreover, there is no difference between the transaction value of GST invoice and transaction value of shipping bill. The respondent given a comparative statement showing invoice value and shipping bill value and also attached copy of shipping bill and GST invoices for reference. Moreover, in support of above contention the respondent also relied upon OIA No.KCH-EXCUS-000-APP-15-2021-GST-JC dated 14-6-2021 passed by Commissioner (Appeals), CGST, Rajkot, involving the same issue and wherein the Circular No.37/11/2018-GST dated 15-3-2018 which was suppressed by Circular No.125/44/2019-GST dated 18-11-2019 were relied.

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 the present appeal was filed to set aside the impugned order on the ground that the adjudicating authority has sanctioned excess refund to the respondent and to order recovery of the same along with interest. The grounds in appeal is that the respondent has taken invoice value as turnover of zero rated supply of goods for arriving admissible refund whereas the turnover of zero rated supply of goods should be FOB value as per shipping bill which is the lower value, in terms of para 47 of Circular No.125/44/2019-GST dated 18-11-2019 and accordingly the admissible refund comes to less than the sanctioned amount resulting in excess sanction



of refund to the respondent. The respondent inter alia contended that as per Section 15 of CGST Act, 2017 the price actually paid or payable is the transaction value of goods ; that as per para 47 of Circular No.125/44/2019 the value recorded in GST invoice should be the transaction value as per Section 15 of CGST Act, 2017 ; that where there is any difference between the transaction value of GST invoice and the transaction value of shipping bill the lower of the two transactions value should be taken into account while calculating the eligible amount of refund and that in their case there is no difference between the transaction value of GST invoice and transaction value of shipping bill.

7.. As per Section 15 of CGST Act, 2017 the value of taxable supply of goods is transaction value which is actually paid or payable and includes all related expenses, ie any amount charged by the supplier on supply of goods form part of transaction value. Under Section 7 of IGST Act, 2017 export of goods is considered as inter-state supply and as per Section 20 of IGST Act, 2017, the provisions of CGST Act, 2017 relating to time and value of supply is also made applicable to integrated tax under IGST Act, 2017. Concurrent reading of above statutory provisions leads that in case of export of goods the value of goods charged in the invoices and paid by the recipient of goods is the transaction value of export goods and hence this value need to be taken towards turnover of zero rated supply of goods in the formula prescribed under Rule 89 (4) of CGST Rules, 2017. However, I find that CBIC in para 47 of Circular No.18-11-2019 has clarified 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.

8. 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 between 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. The Circular further clarifies that in normal cases the transaction value (invoice value) should also be recorded in shipping bills but only in case of any difference in value declared in shipping bill with invoice value, the lower value should be taken for calculating the eligible amount of refund. Thus, the Circular envisage a situation where value of goods as per invoice was less than value as per shipping bill and vice versa. In the subject case the respondent has taken invoice value towards turnover of zero rated supply of goods whereas appellant has taken the stand that FOB value as per shipping bill which was lower than the invoice value needs to be taken towards turnover of zero rated supply of goods.



The respondent further contended that in their case there is no difference in the transaction value as per invoices and transaction value as per shipping bill. Therefore, to confirm the veracity of contentions made by the appellant and respondent, I have verified the invoices and shipping bills submitted by the respondent along with worksheet attached to appeal. On correlating the invoices with corresponding shipping bills submitted by the I find that value as per invoices and value as per shipping bills is as under:

Invoice Num and date	Value as invoice	Shipping No. and date	FOB value per SB	Freight+insurance a shipping bill	Total value as shipping bill	Difference
KEPL/94/2-1-2021	4717657	7676402/4-1-2021	4717657	0	4717657	0
KEPL/95/2-1-2021	6140813	7725799/6-1-2021	5868000	272813	6140813	0
KEPL/96/8-1-2021	7085777	7765686/8-1-2021	6770823	271125	7041948	43829
KEPL/98/11-1-2021	7488473	7827405/11-1-2021	7215700	272773	7488473	0
KEPL/99/14-1-2021	7640881	7922382/15-1-2021	7369756	271125	7640881	0
KEPL/100/14-1-2021	5831703	7922409/15-1-2021	5831703	0	5831703	0
KEPL/101/19-1-2021	4527484	8038361/20-1-2021	4209364	318120	4527484	0
KEPL/102/28-1-2021	6013226	8242978/29-1-2021	6013226	0	6013226	0
KEPL/103/29-1-2021	7805294	8242172/29-1-2021	7516894	288400	7805294	
	57251308		55513123	1694356	57207479	43829

9. The above comparative data show that except in case of export made under Shipping Bill No7765686 dated 8-1-2021 (Invoice No.KEPL/96 dated 8-1-2021) there is no difference in transaction value as per invoice and value as per shipping bill value. It further makes it clear that In the subject appeal lower value was taken considering the FOB value of goods only and without considering the freight and insurance amount. I find this method adopted by the appellant is not a correct method inasmuch as the freight and insurance charged in invoice also form part of transaction value in case of export of goods made at CIF. Therefore, freight and insurance charged in shipping bill also need to be taken into account for considering shipping bill value for the purpose of arriving lower value as per Circular. It is pertinent to mention that the Circular envisage to compare value as per invoice and value as per shipping bill and does not specify that only the FOB value as per shipping bill need to be compared with invoice value so as to adopt lower value among invoice and shipping bill. Accordingly, by taking into account the freight and insurance I find that shipping bill value is not lower than the invoice value except in case of shipping bill No.7765686. In case of export made under Shipping Bill No7765686 dated 8-1-2021 even after considering the freight amount the shipping bill value was lower than the invoice value. I further notice that there is also an error in appeal in considering the turnover of zero rated supply of goods at Rs.5,48,13,125/- inasmuch as per shipping bill number 7922409 dated 15-1-2021 the FOB value was shown as 58,31,703/- whereas in the worksheet attached to appeal the FOB value was shown as Rs.51,31,704/-. Taking into account the value as per invoice and shipping bill as per

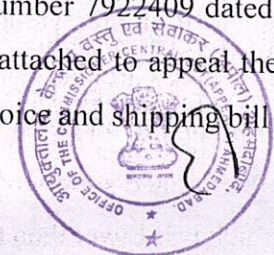


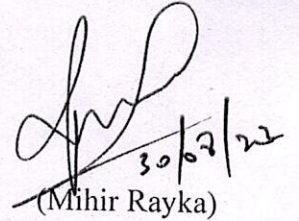
table above and applying the Circular No.125/44/2019-GST, I find that the turnover of zero rated supply of goods in this case comes to Rs.5,72,07,479/- as against value of Rs.5,48,13,125/- taken in appeal.

10. I further find that as per definition of 'adjusted total turnover' defined in clause (E) of sub-rule (4) of Rule 89, 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. Accordingly, 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. In the present appeal, the value of zero rated turnover was taken as FOB value as per shipping bill. However, the adjusted turnover is taken as per GSTR3B returns, which imply that turnover of zero rated supply in adjusted total turnover is taken as invoice value. Apparently, this result in adopting two different values for same zero rated supply of goods, which I find is factually wrong and not in consonance with statutory provisions. Therefore, I am of the considered view that the same value of zero rated supply of goods taken as turnover of zero rated supply of goods need to be taken in adjusted total turnover also. Accordingly in the subject case the turnover of zero rated supply of goods comes to Rs.5,72,07,479/-; adjusted total turnover comes to Rs.7,52,42,965/- (57207479+18035486) and admissible refund comes to Rs.56,45,810/- against refund of Rs.56,46,846/- sanctioned by the adjudicating authority resulting in sanction of excess refund of Rs.1036/-.

11. In view of above, I find that the adjudicating authority has erroneously sanctioned excess refund of Rs.1036/- to the respondent and the present appeal succeeds to the extent of excess sanction of refund of Rs.1036/-. Therefore, I set aside the impugned order and allow the appeal to the extent of sanction of refund of Rs.1036/-. I further order the original authority to recover excess refund of Rs.1036/- sanctioned to the respondent along with interest under CGST Act and Rules framed thereunder. Accordingly, I partially set aside the impugned order and partially allow the appeal filed by the appellant.

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

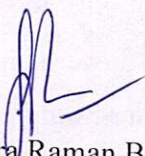
12. The appeal filed by the appellant stands disposed of in above terms.


30/03/22

(Mihir Rayka)
Additional Commissioner (Appeals)

Date :

Attested


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



By RPAD

To,

The Assistant Commissioner,
CGST, Division IV,
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) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 5) M/s. Katex Exim P. Ltd. 55, Ashra Industrial Estate, B/h Mahalaxmi Fabrics, Narol, Ahmedabad-382405
- ~~6) Guard File~~
- 7) PA file



