



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

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क फाइल संख्या : File No : GAPPL/ADC/GSTD/229/2021-APPEAL & GAPPL/ADC/GSTD/233/2021-APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-122 to 123/2022-23**
दिनांक Date : **26-09-2022** जारी करने की तारीख Date of Issue : **26-09-2022**

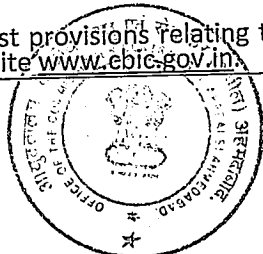
श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZY2405210196162 DT. 14.05.2021 & ZS2405210565717 DT. 31.05.2021** issued by Deputy Commissioner, Division-VI, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Assistant Commissioner, CGST, Division-VI, 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 .



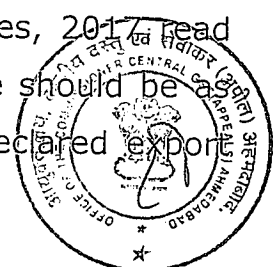
ORDER-IN-APPEAL

The Assistant Commissioner, CGST, Division VI (Vastrapur), Ahmedabad South (hereinafter referred to as the *appellant*) has filed appeals on dated 10-11-2021 and on dated 26-11-2021 against Order No.ZY2405210196162 dated 14-5-2021 and Order No.ZS2405210565717 dated 31-5-2021 (hereinafter referred to as the *impugned orders*) passed by the Deputy Commissioner, CGST, Division VI, Ahmedabad South (hereinafter referred to as the *adjudicating authority*) sanctioning refund to M/s. BRR Enterprise Private Limited, 308, 3rd Floor, Sukun Business Centre, Nr. Fairdeal House, Swastik Cross Road, CG Road, Ahmedabad 380 009 (hereinafter referred to as the *respondent*).

2(i). Briefly stated the fact of the case is that the respondent registered under GSTIN 24AAJCB1706E1Z7 has filed refund claim for Rs.51,32,637/- and Rs.27,01,481/- for refund of ITC accumulated due to export without payment of tax for the month of March 2021 and April 2021 respectively. After due verification the *adjudicating authority* vide *impugned orders* sanctioned refund to the *respondent*. During review of refund claim it was observed that higher amount of refund has been sanctioned than what is actually admissible in accordance with Rule 89 of CGST Rules, 2017 read with Section 54 (3) of CGST Act, 2017. The respondent has shown the adjusted total turnover of Rs.19,37,51,837/- and Rs.7,96,59,439/- whereas as per GSTR3B and GSTR1 returns the actual adjusted total turnover was Rs.51,54,57,867/- and Rs.32,62,43,719/-. Thus taking the actual value of adjusted total turnover and applying the formula for refund of export without payment of tax the admissible refund comes to Rs.20,09,827/- and Rs.6,59,625/- instead of Rs.51,32,637/- and Rs.27,01,481/- sanctioned by the adjudicating authority. Thus there is excess sanction of refund of Rs.31,22,810/- and Rs.20,41,856/- which is required to be recovered with interest.

2(ii). In view of above, the *appellant* has filed the present appeals on the following grounds:

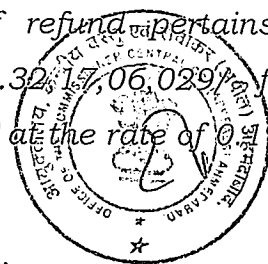
The *adjudicating authority* has erred in passing the refund orders, as higher amount of refund has been sanctioned to the *respondent* than what is actually admissible to them. As per definition of turnover in State or turnover in Union Territory referred in the definition of 'adjusted total turnover, as per Rule 89 (4) of CGST Rules, 2017 read with Section 2 (112) of CGST Act, 2017, the taxable value should be as per Section 15 of CGST Act, 2017. The respondent has declared export



value in the GSTR3B returns 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* by taking lower value of adjusted total turnover thereby excess refund was given to the *respondent* which is required to be recovered along with interest. In view of above the *appellant* filed the present appeals to set aside the *impugned orders* wherein the *adjudicating authority* has erroneously sanctioned refund of Rs.51,32,637/- and Rs.27,01,481/- instead of Rs.20,09,827/- and Rs.6,59,625/- under Section 54 (3) of CGST Act, 2017 ; to pass an order directing the original authority to demand and recover amount erroneously refunded of Rs.31,22,810/- and Rs.20,41,856/- alongwith interest and to pass any orders as deem fit in the interest of justice.

3. The *respondent* vide letter dated 20-7-2022 submitted memorandum/cross objection as under :

The basic purpose behind bringing GST into the Indian economy is to remove cascading effects, avoid unnecessary blockage of working capital, avoid double taxation and allowing free flow of credit in the system. For export of goods/services another underlying objective was to export only goods/service outside India and not tax on the same ; further to increase the competitiveness of the Indian Goods in the foreign market the entire refund of taxes charged in India including various other export incentives are granted ; that respondent referred to various legal provisions relating to export of goods and refund under GST viz. Section 2 (5) of IGST Act, 2017, Section 16 of CGST Act, 2017, Rule 89 of CGST Rules, 2017 and Rule 89 4B of CGST Rules, 2017. The contention of the *appellant* regarding adjusted total turnover is not in accordance with provisions of Rule 89 of CGST Rules, 2017. The respondent submitted invoice level break up of entire zero rated turnover as disclosed in GSTR3B and GSTR1. During the claim period they had purchased goods under the category where the supplier has made payment of tax under regular scheme and supplier has availed the benefit of Notification No.40/2017-CT (Rate) dated 23-10-2017 or Notification NO.41/2017-IT (Rate) dated 23-10-2017 and made payment of tax at the GST rate of 0.1%. As per provisions of Rule 89 for the purpose of computation of adjusted turnover, the turnover for the supplies in respect of which refund is claimed under sub rule (4A) or sub rule (4B) or both, if any during the relevant period is to be excluded. Accordingly, in respect of refund pertains to March'2021 they had correctly excluded turnover of Rs.32,17,06,029/- from adjusted total turnover as the same is purchased by GST at the rate of 0.1% to



the supplier. In the matter of refund pertains to April'2021 the Respondent has submitted that turnover of Rs.20,41,59,394/- is to be excluded from Adjusted Total Turnover as the same is purchased by GST at rate of 0.1% to the supplier. Accordingly, Adjusted Total Turnover comes to Rs.12,20,84,325/-. However, in the refund application same is declared as Rs.7,96,59,439/-. In this regard, the Respondent has submitted that during April'2021 the local turnover is Zero, therefore, even if consider the Zero rated turnover as Rs.12,20,84,325/- and adjusted turnover as Rs.12,20,84,325/- there will not be any change in admissible amount of refund claim. To substantiate their claim the respondent submitted all export invoice along with purchase invoices. From the aforementioned invoices it can be inferred that they had correctly computed refund claim in accordance with GST Law and there is no any excess claim of refund. In view of above submission the respondent requested to quash and set aside the present appeals.

4. Personal hearing was held on dated 27-7-2022. No one appeared on behalf of the appellant on virtual mode. Shri JaykishanVidhwani, authorized representative appeared on behalf of respondent on virtual mode. He stated that they have nothing more to add to their written submission till date.

5. 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 issue involved in both the appeals are on same set of facts. In these cases, the respondent has claimed refund of ITC accumulated on account of export of goods made without payment of tax which is governed under Section 54 (3) of CGST Act, 2017 read with Rule 89 (4) of CGST Rules, 2017. The dispute is only with regard to 'adjusted total turnover' taken for determining admissible refund in the formula prescribed under Rule 89 (4) of CGST Rules, 2017. The appellant has taken the stand that the taxable value of zero rated supply of goods as shown in GSTR3B and GSTR1 returns need to taken towards 'adjusted total turnover' whereas the respondent was of the view of value of zero rated supply of goods other than which are covered under Rule 89 (4A) or Rule (4B) only need to taken towards adjusted total turnover. For better appreciation of facts, I refer to definitions of adjusted total turnover given under Rule 89 (4) of CGST Rules, 2017.

*[(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
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.

Sub Rule (4A) of Rule 89 of CGST Rules, 2017 :

In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification NO.48/2017-Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E) dated the 18th October, 2017, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

Sub rule (4B) of Rule 89 of CGST Rules, 2017 :

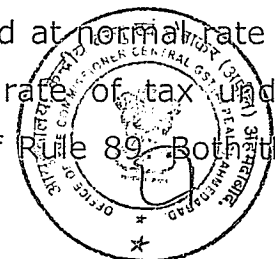
Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has -

(a) received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification NO.40/2017-Central Tax (Rate) dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification NO.41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E), dated the 23rd October, 2017; or

(b) availed the benefit of notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017.

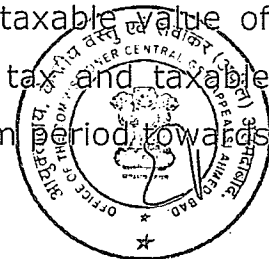
the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

6. As per provisions of Rule 89 of CGST Rules, 2017, refund of ITC accumulated on account of zero rated supply of goods is admissible in respect of inputs/inputs services procured at normal rate of tax under Rule 89 (4) as well as at concessional rate of tax under Notifications specified under sub rule (4A) and (4B) of Rule 89. Both the



provisions governing refund are independent and separate. As per definitions of adjusted total turnover given above, in respect of claim made under Rule 89 (4) the adjusted total turnover excludes the turnover of supplies in respect of which refund is claimed under sub rule (4A) and/or (4B) if any during the claim period. In other words in cases where the claimant has procured inputs and input services at normal rate of tax as well as at concessional rate of tax under Notifications referred under sub rule (4A) and (4B) and makes zero rated supply of goods using both the categories of inputs/input services then for determining admissible refund under Rule 89 (4), the turnover of supplies made under sub Rule (4A) or/and (4B) need to be excluded for arriving adjusted total turnover in respect of claim made under Rule 89 (4) and vice versa.

7. From the facts of the case and documents made available to me, I find that the *respondent* has procured various textile materials/fabrics both at normal rate of tax 5%/12% and also at concessional rate of tax of 0.1% and made zero rated supply of goods. As per Notification 41/2017--Integrated Tax (Rate) dated 23-10-2017, exemption is provided to inter-State supply of taxable goods by a registered supplier to a registered recipient for export, from so much of the integrated tax leviable thereon under section 5 of the Integrated Good and Services Tax Act, 2017 (13 of 2017), as is in excess of the amount calculated at the rate of 0.1 per cent. Apparently, the *respondent* has procured supplies under Notification No.41/2017 for which refund of ITC is governed under sub rule 89 (4B) of CGST Rules, 2017. However in the grounds of appeal the *appellant* seek to adopt adjusted total turnover based on GSTR3B and GSTR1 returns which include taxable value of zero rated supply made using inputs/input services procured both at normal rate and at concessional rate under Notifications No.41/2017. Since, the claims in the subject case pertain to refund of ITC accumulated on account of zero rated supply made under Rule 89 (4) of CGST Rules, 2017, the turnover of zero rated of goods made using inputs/input services procured under Notification No.41/2017 will not form part of adjusted total turnover for arriving admissible refund claimed under Rule 89 (4). Hence, I find that the method adopted by the *appellant* in the grounds of appeal is factually incorrect and not in accordance with statutory provisions. On the other hand, I find that the *respondent* has claimed refund taking into account the taxable value of zero rated supply of goods procured at normal rate of tax and taxable value of supply of other than zero rated made during claim period towards



adjusted total turnover which I find is correct method and in accordance with statutory provisions. Therefore, I do not find any infirmity in the *impugned orders* passed by the *adjudicating authority* sanctioning refund claimed by the *respondent*.


8. 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*.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

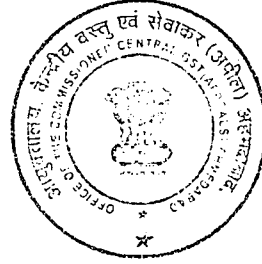
The appeals filed by the *appellant* stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Attested 
(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad

Date: 26.09.2022



By R.P.A.D.

To,
The Assistant Commissioner,
CGST, Division VI (Vastrapur),
Ahmedabad South

Appellant

M/s. BRR Enterprise Private Limited,
308, 3rd Floor, Sukun Business Centre,
Nr. Fairdeal House, Swastik Cross Road,
C. G. Road, Ahmedabad 380 009

Respondent

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) to M/s.BRR Enterprises Pvt.Ltd 308, 3rd Floor, Sukan Business Centre, Swastik Cross Road, CG Road, Ahmedabad 380 009
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

