



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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टेलीफैक्स 07926305136



DIN- 20221264SW0000622542

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/203/2022 -APPEAL / 5920 - 25

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-178/2022-23**
दिनांक Date : **13-12-2022** जारी करने की तारीख Date of Issue : **14-12-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZR2410210078345 DT. 06.10.2021** issued by The Assistant Commissioner, CGST & CX, Division-III, Ahmedabad South

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

| Appellant | Respondent |
|---|--|
| Assistant Commissioner, CGST, Division-III, Ahemdabad South | M/s. Kantilal Ishwarlal Patel (Aries Dyechem Industries) C-1/260, GIDC Phase-II, Vatva, GIDC Vatva, Ahmedabad-382445 |

| | |
|-------|---|
| (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 करके 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**Brief Facts of the Case :**

The following appeal has been filed by the Assistant Commissioner, CGST, Division - III, Ahmedabad South (hereinafter referred as '*appellant*' / '*department*') in terms of Review Order issued under Section 107(2) of the CGST Act, 2017 (hereinafter referred as '*the Act*') by the Reviewing Authority against RFD-06 Order (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, CGST, Division - III, Ahmedabad South (hereinafter referred as '*adjudicating authority*') in the case of **M/s. Kantilal Ishwarlal Patel (Aries Dyechem Industries)**, C-1/260, Phase - II, GIDC, Vatva, Ahmedabad - 382445 (hereinafter referred as '*Respondent*').

| Appeal No. & Date | Review Order No. & Date | RFD-06 Order No. & Date |
|---|-----------------------------|-------------------------------------|
| GAPPL/ADC/GSTD/203/2022- APPEAL Dated 04.04.2022 | 01/2022-23 Dated 01.04.2022 | ZR2410210078345 Dated 06.10.2021 |

2(i). Brief facts of the case are that the '*Respondent*' holding GSTN No. 24AAMPP5809L1Z8 had filed refund claim of Rs.1,36,28,870/- of accumulated ITC due to export without payment of duty vide ARN No. AA240921106455G dated 28.09.2021 under Section 54 of the CGST Act, 2017. After verification of said refund claim the *adjudicating authority* found the claim in order and accordingly sanctioned the same vide '*impugned order*'.

2(ii). During review of said refund claim, it was observed that the claimant has filed refund claim on account of ITC accumulated due to export without payment of tax for the period April 2021 to June 2021 and said claim is sanctioned by the *adjudicating authority*. However, on going through the refund claim, it is noticed that higher amount of refund has been sanctioned to the *respondent* than what is actually admissible to them in accordance with Rule 89 (4) of CGST Rules, 2017 read with Section 54 (3) of CGST Act, 2017. It was observed that the claimant has shown turnover of zero rated supply as Rs.12,13,65,842/- which is the invoice value of goods exported for the said period whereas, as per Shipping Bill value, the turnover of zero rated supply is Rs.11,87,42,404/-. Thus taking the lower value of goods exported, applying the formulae for refund of export without payment of tax the admissible refund comes to Rs.1,33,34,269/- in place of Rs.1,36,28,870/- sanctioned by *adjudicating authority*



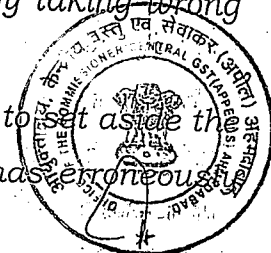
respondent. Thus, there is excess sanction of refund of Rs.2,94,601/- to the respondent which is required to be recovered along with interest. The details are as under :

(Amount in Rs.)

| Turnover of zero rated supply (Invoice Value) (1) | Turnover of zero rated supply (Shipping Bill Value) (2) | Net ITC (3) | Adjusted Total Turnover (4) | Refund Amount sanctioned (1*3/4) | Refund Amount admissible (2*3/4) | Excess Refund amount sanctioned |
|--|--|----------------|--------------------------------|-------------------------------------|-------------------------------------|---------------------------------|
| 121365842 | 118742404 | 21563127 | 192020842 | 13628870 | 13334269 | 294601 |

2(iii). In view of above, the appellant has 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 claimant than what is actually admissible to them in accordance with the Rule 89(4) of the CGST Rules, 2017 read with Section 54(3) of the CGST Act, 2017.
- ii. The provision of Para 47 of Circular No. 125/44/2019-GST dated 18.11.2019 is as follows :
 "During the processing of 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"
- iii. It is noticed that the adjudicating authority has considered higher value of turnover of zero rated supply i.e. Rs.12,13,65,842/- for said period, whereas on perusal of the Shipping Bill it is noticed as Rs.11,87,42,404/-. On applying the formulae for refund of export without payment of duty on the lower value, the admissible amount of refund comes to Rs.1,33,34,269/- instead of Rs.1,36,28,870/- sanctioned by the sanctioning authority.
- iv. Thus, it appears that adjudicating authority has 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.2,94,601/- to the claimant which is required to be recovered along with interest and penalty as the claimant has misled the department by taking wrong value of zero rated turnover.
- v. In view of above grounds the appellant has requested to set aside the impugned order wherein the adjudicating authority has erroneously



sanctioned Rs.1,36,28,870/- instead of Rs.1,33,34,269/-, under Section 54 (3) of CGST Act, 2017 and to pass order directing the original authority to demand and recover the amount erroneously refunded of Rs.2,94,601/- with interest; and to pass any order as deem fit in the interest of justice.

Personal Hearing :

3. Personal Hearing in the matter was held on 24.11.2022. Shri Hitesh S. Patel was appeared on behalf of the 'Respondent' and submitted a written reply dated 24.11.2022, as per their submission they have paid the due amount and submitted the copy of DRC-03 dated 19.05.2022. They have nothing more to add to it.

Discussion and Findings :

4. I have carefully gone through the facts of the case, grounds of appeal, submission 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. In the present case 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 'Zero rated 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 'Zero rated turnover' considered by the adjudicating authority is not as per Shipping Bill, which is not according to the para 47 of the CBIC's Circular No. 125/44/2019-GST dated 18.11.2019. The Respondent has claimed the Refund by considering Rs.12,13,65,842/- as Zero rated Supply/Turnover in the formula for determining the admissible amount of refund whereas, as per Shipping Bill it is Rs.11,87,42,404/-. Accordingly, by considering the Zero rated Supply/Turnover as Rs. 11,87,42,404/- the admissible amount of refund comes Rs.1,33,34,269/- instead of Rs.1,36,28,870/- as sanctioned in the present matter vide *impugned order*. Accordingly the admissible refund comes to less than the sanctioned amount, resulting in excess of refund of Rs.2,94,601/- to the respondent.

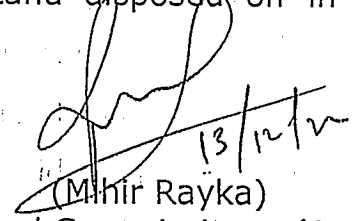


5. Further, I find that the Respondent vide letter dated 24.11.2022 has informed that they have already paid back the refund amount to the Department with interest. The Respondent has produced the copy of DRC-03 according to which the Respondent has paid the amount by debiting Cash Ledger vide Debit Entry No. DC2405220122426 dated 19.05.2022 for Rs.2,94,601/- towards Tax and Rs.31,675/- towards Interest. Therefore, I find that the Respondent has accepted the view of the department.

6. In view of above discussions, I find that the impugned order is not legal and proper and therefore, require to be set aside. Accordingly, the appeal filed by the 'Department' is allowed and set aside the 'impugned order'.


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

The Appeal filed by 'Department' stand disposed off in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 13.12.2022

Attested

(Dilip Jadaav)
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

To,
The Assistant/Deputy Commissioner,
CGST, Division - III,
Ahmedabad South.

Respondent

M/s. Kantilal Ishwarlal Patel,
(Aries Dyechem Industries),
C-1/260, Phase - II, GIDC,
Vatva, Ahmedabad - 382445

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Deputy/Assistant Commissioner, CGST, Division-III, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File / Guard File



