



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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टेलीफैक्स 07926305136



DIN- 20221264SW000000BB59

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/845/2022 -APPEAL

/ 6006 - 6011

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-179/2022-23**
दिनांक Date : **16-12-2022** जारी करने की तारीख Date of Issue : **16-12-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

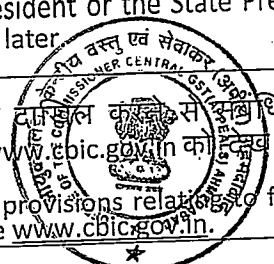
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZU2408210222987 DT. 17.08.2021** issued by The Assistant Commissioner, CGST & CX, Division-V, Ahmedabad South

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

Appellant	Respondent
Assistant Commissioner, CGST, Division-V, Ahmedabad South	M/s. Australian Premium Solar(India) Pvt. Ltd. NH 08, Tajpur, Ta. Prantij, Ahmedabad-383205

(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 दायर 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**Brief Facts of the Case :**

The following appeal has been filed by the Assistant Commissioner, CGST, Division - V, 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 - V, Ahmedabad South (hereinafter referred as '*Adjudicating Authority*') in the case of **M/s. Australian Premium Solar (India) Pvt. Ltd.**, NH 08, Tajpur, Ta. Prantij, Ahmedabad - 383205 (hereinafter referred as '*Respondent*').

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date
GAPPL/ADC/GSTD/845/2022- APPEAL Dated 03.02.2022	45/2021-22 Dated 28.12.2021	ZU2408210222987 Dated 17.08.2021

2(i). Brief facts of the case are that the '*Respondent*' holding GSTN No. 24AALCA6553A1ZZ had filed refund claim of Rs.68,57,483/- of accumulated ITC (Input Tax Credit) due to Inverted Tax Structure vide ARN No. AA240721109139H dated 29.07.2021 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 inverted tax structure for the period April 2021 to May 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 (5) of CGST Rules, 2017 read with Section 54 (3) of CGST Act, 2017. It was observed that the claimant has shown Rs.9,94,66,674/- as '*Adjusted Total Turnover*' in RFD01; whereas, the actual '*Adjusted Total Turnover*' as per GSTR 3B returns for the said period of April 2021 to May 2021 is Rs.14,22,51,938/-. Also the claimant has not reversed ITC on the percentage of exempted clearance during captioned period in view of Rule 42 of the CGST Rules, 2017 read with Section 17(2) of the CGST



Act, 2017; thereby inflating the Net ITC available for refund calculation, as shown below :

Turnover as per GSTR 3B for the Months of April and May 2021				
	Local Clearance Rs.	Exempted Clearance Rs.	Total Clearance Rs.	% of Exempted Clearance to Total Clearance
April 2021	69118874	25507396	94626270	26.96
May 2021	73133064	28691911	101824975	28.18
Total	142251938	54199307	196451245	

ITC taken, liable to be reversed and available for Refund for the Months of April and May 2021					
IGST Rs.	SGST Rs.	CGST Rs.	Total Rs.	ITC liable to be reversed Rs.	Net ITC available for refund calculation Rs.
597735	3228514	3228514	7054763	1901677	5153086
4349843	2046117	2046117	8442077	2378781	6063296
4947578	5274631	5274631	15496840	4280458	11216382

Considering actual 'Adjusted Total Turnover' and 'Net ITC' as narrated above the amount of refund admissible to claimant as per Rule 89(5) of the CGST Rules, 2017 is calculated below for the months of April and May 2021 :

(Figures in Rs.)							
	T/o of inverted rated supply of goods (1)	Tax payable on such inverted rated supply of goods (2)	Adjusted total turnover (3)	Net ITC (4)	Max. Refund amt. to be claimed [5=(1*4/3)-2]	Amt. sanctioned	Amount to be recovered
IGST/CGST/SGST/UTGST/Cess	99366674	8534305	142251938	11216382	-699371	6857483	6857483

Therefore, aforesaid amount of erroneous refund of Rs.68,57,483/- is required to be recovered from the claimant. Accordingly, it was observed by the Department that the refund sanctioned to the Respondent is not proper and legal.

2(iii). In view of above, the appellant has filed the present appeal on the following grounds:

- The adjudicating authority has erred in calculating the refund amount by taking wrong value of 'adjusted total turnover' and also 'Net ITC'. Claimant has shown Rs.9,94,66,674/- as 'Adjusted Total Turnover' in RFD01; whereas the actual 'Adjusted Total Turnover' as per GSTR 3B returns for the period April'21 to May'21 is Rs.14,22,51,938. Also claimant has not reversed ITC on the percentage of exempted clearance during captioned period in view of Rule 42 of the CGST



- Rules, 2017 read with Section 17(2) of the CGST Act, 2017; thereby inflating the Net ITC available for refund calculation as narrated in foregoing paragraphs. Thus actual Net ITC comes to Rs.1,12,16,382/- instead of Rs.1,54,96,840/- shown in RFD01. By taking these values of actual 'adjusted total turnover' and also actual 'Net ITC' available for refund calculation, the refund available comes to Rs.(-6,99,371/-)
- ii. Thus amount of Rs.68,57,483/- has wrongly been given as excess refund to the claimant as narrated in above paragraphs, which is required to be recovered alongwith interest and penalty.
 - iii. In view of above grounds the appellant has made prayer to set aside the impugned order wherein the adjudicating authority has erroneously sanctioned Rs.68,57,483/- instead of rejecting the same 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. 68,57,483/- with interest and penalty; and to pass any order as deem fit in the interest of justice.

Personal Hearing :

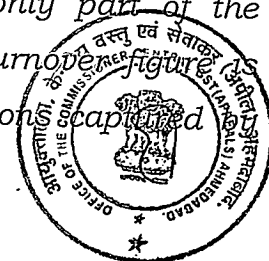
3. Personal Hearing in the matter was held on 26.08.2022 through virtual mode wherein Shri Parag Adhiya, C.A. was appeared on behalf of the 'Respondent'. Further during PH he has requested that they want to submit their reply, which was duly approved and 03 working days period was granted to them to submit their reply in the matter.

Accordingly, the Respondent has submitted the reply dated 29.08.2022, wherein stated that –

- There are some factual differences in Review Order/Appeal versus documents submitted when refund application filed.
- Submitted hard copies of documents to corroborate that refund sanctioned is valid in law and no need to set aside said refund order.

Difference in Turnover

- Adjusted Turnover of Rs.9,94,66,674/- as per RFD01 considered in entire computation is not correct.
- While filing GST Refund Application, transaction of inward and outward supplies have to be uploaded in Statement 01A in GST Portal through offline utility. Figures of Turnover in RFD 01 are auto-captured based on transactions uploaded in Statement 01A through offline utility. However, there is an issue in portal which always throws errors in circulation and allows upload only part of the transactions successfully. Hence, corresponding Turnover figure captured in RFD 01 only to the extent of transactions captured



offline utility and ignores rest transactions which throws up as an error.

- On account of same issue or wrong turnover, Show Cause Notice was issued on 06.08.2021 by Refund Approving Office. In response to said SCN, Statement 01A with correct Turnover as per GSTR 1 for April and May 2021 was uploaded on 12.08.2021. It contains Turnover of Rs.14,17,92,974/- which is in reconciliation with GSTR 1 for the refund period and Review Order with corresponding Appeal as well.
- Accordingly,
 - o Turnover submitted during Filing Refund Application – Rs.14,14,92,974/-
 - o Turnover mentioned in Review Order and Appeal – Rs.14,22,51,938/-
 - o Factual Difference – Rs.4,58,964/-
- Factual difference is on account of Credit Notes post filing GSTR and hence we disclosed correct figures in Refund Application as per books of accounts.
- If SCN and reply to it was looked into while preparing Review Order, the said query could not form part of the Review Order and corresponding Appeal. Hence, there is no error in Turnover figure during sanction of Refund as mentioned in the said Review Order and corresponding Appeal.

Reversal of ITC on Exempted Supply (in fact Subsidy)

- Figures mentioned as exempted supply in GSTR 1 is amount of **Subsidy** of Rs.5,41,99,307/- receivable from State Government. Since, there is no tab in GSTR 1 disclose subsidy amount, we have mentioned it in the said tab. Factually, there (subsidy) is no supply at all. Once it is not supply, it cannot be Exempted Supply and hence question of categorizing it as exempted supply and reversal of corresponding ITC does not arise at all.
- Further, referred following existing clarity in CGST Law :
 - o Section 15(2)(e) of the CGST Act, 2017 reads as follows :
 - o (2) The value of supply shall include-
 - (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.
- So, CGST Act itself provides that the value of supply shall not include subsidies received from CG/SG
- Also referred clause 31 of Section 2 of the CGST Act
 - o (31) "consideration" in relation to the supply of goods or services or both includes-



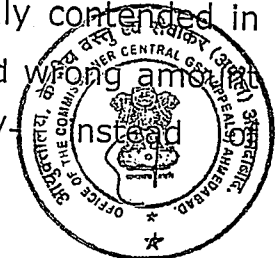
- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
- The Act intends to exclude subsidy from the CGST/SGST from the 'consideration' definition itself thereby intending to remove it from the turnover of the entity as neither taxable nor exempt.
- On a harmonious reading of both the provisions, the Act does not intend to consider subsidy as exempt turnover, since the definition of exempt supply is in generic in nature whereas the exclusion of subsidy from the definition of 'consideration' itself and value of supply is specific and intentional.
- Clarification on this issue was also submitted before Refund sanctioning authority. If SCN and replied to it was looked into while preparing Review Order, the said query could not form part of the Review Order and Corresponding Appeal.
- Hence, we believe there is no error to reverse ITC during sanction of Refund as mentioned in the said Review Order and Corresponding Appeal

In view of above submissions, the appellant has submitted that there is no error in refund sanctioned process and therefore requested to quash the Review Order and Corresponding Appeal.

Discussion and Findings :

4(i). 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 and penalty. In the present case the respondent has claimed refund of ITC accumulated on account of inverted tax structure which is governed under Section 54 (3) of CGST Act, 2017 read with Rule 89 (5) of CGST Rules, 2017.

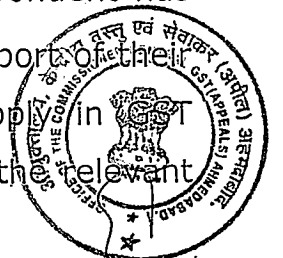
4(ii). The 'Appellant'/'Department' has mainly contended in the present appeal that the 'Respondent' has considered wrong amount of 'Adjusted Total Turnover' as Rs.9,94,66,674/- instead



Rs.14,22,51,938/- for determining the admissible amount of Refund. In this regard, I find that the 'Respondent' has submitted in their reply dated 29.08.2022 that regarding mentioning wrong turnover a SCN dated 06.08.2021 was issued to them by the Refund approving officer. In response to said SCN they had submitted reply in the form GST-RFD-09 dated 12.08.2021 alongwith documents such as Annexure B, Annexure 2A and Statement 1A. The 'Respondent' has further informed that they declared the Turnover Rs.14,17,92,974/- and regarding the factual difference of Rs.4,58,964/- (142251938-141792974) stated that it is on account of Credit Notes post filing GSTR. Accordingly, the 'Respondent' has submitted in their reply in the present appeal that they disclosed the correct figures in Refund Application as per books of accounts.

4(iii). Further, I find that the 'Department' has also contended in the present appeal that 'Respondent' has not reversed ITC on the percentage of exempted clearance during captioned period in view of Rule 42 of the CGST Rules, 2017 read with Section 17(2) of the CGST Act, 2017; thereby inflating the Net ITC available for refund calculation. The 'Department' has submitted in the present appeal that as per GSTR 3B there is exempted clearance of Rs.5,41,99,307/- (25507396+28691911) during April & May 2021. The details are mentioned at the para 2(ii) (supra). I find that the Respondent in their reply dated 29.08.2022 informed that the figures mentioned as exempted supply in GSTR 1 is amount of Subsidy of Rs.5,41,99,307/- receivable from State Government; that since, there is no tab in GSTR 1 disclose subsidy amount, they have mentioned it in the said tab.

4(iv). In this regard, I find that the appellant has declared the amount of Rs.5,41,99,307/- (25507396+28691911) in the GSTR-1 for the period April'21 & May'21 as 'Total Exempted Amount'. Further, I find that the appellant has also declared the same amount in GSTR-3B for the month of April'21 & May'21 as 'Other outward supplies (nil rated, exempted)'. The Respondent in the present appeal contending that said amount are pertains to Subsidy receivable from State Government, however, I do not find any such authentic evidence, documents that said amount pertains to Subsidy only. I find that the Respondent has not produced any such valid or authentic documents in support of their claim that the said amount mentioned as exempted supply in GSTR Returns are pertains to Subsidy. Further, ongoing through the



GSTR-1 and GSTR-3B I find that it is clearly mentioned as exempted supply in the Returns. Therefore, I am of the view that the Net ITC considered by the adjudicating authority in sanctioning the refund in present matter is not correct. Therefore, the refund sanctioned vide impugned order is not legal and proper.

5. In view of above, I find that the 'Department' has rightly pointed out that the *adjudicating authority* has erroneously sanctioned the refund to the 'Respondent'. Based on the details/documents as discussed in foregoing paras as well as produced before the appellate authority, the admissible amount of refund in terms of formula prescribed in Rule 89(5) of the CGST Rules, 2017 is worked out as under

(Figures in Rs.)							
	T/o of inverted rated supply of goods (1)	Tax payable on such inverted supply of goods (2)	Adjusted total turnover (3)	Net ITC (4)	Max. Refund amt. to be claimed [5=(1*4/3)-2]	Amt. sanctioned	Amount to be recovered
IGST/CGST/SGST/UTGST/Cess	99366674	8534305	141792974	11216382	-674011	6857483	6857483

In view of above, I find that the 'Respondent' is not eligible for any amount of refund on account of 'accumulated ITC (Input Tax Credit) due to Inverted Tax Structure'.

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'.

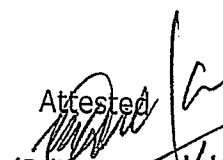
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 16.12.2022

Attested

(Dipu Jadav) 16.12.2022
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

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

Appellant

M/s. Australian Premium Solar (India) Pvt. Ltd.,
NH 08, Tajpur, Ta. Prantij,
Ahmedabad - 383205

Respondent

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-V, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File.
8. Guard File



