



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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DIN- 20230164SW0000555DDC

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/175 & 176/2022 -APPEAL / 7228-33

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-210 to 211/2022-23
दिनांक Date : 11-01-2023 जारी करने की तारीख Date of Issue : 11-01-2023

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. ZV2408210237209 DT. 17.08.2021 &
ZY2408210237110 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. Mansukhbhai Bhagwanbhai Patel (Fluid Tech Systems), 73, Tribhuvan Industrial Estate, Opp Road No. 11, Kathwada GIDC, Kathwada, Ahmedabad-382430

(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 पर जा 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

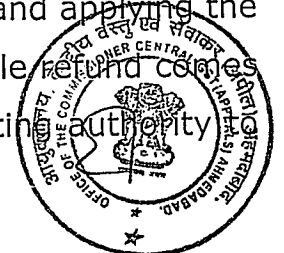
The Assistant Commissioner, CGST, Division V, Ahmedabad South (hereinafter referred to as the 'Appellant/Department') has filed the following appeals offline in terms of Advisory No.9/2020 dated 24-9-2020 issued by the Additional Director General (Systems), Bengaluru against following Orders (hereinafter referred to as the *Impugned Orders*) passed by the Assistant Commissioner, CGST, Division V, Ahmedabad South (hereinafter referred to as the *Adjudicating Authority*) sanctioning refunds to **M/s. Manshukhbhai Bhagwanbhai Patel (Fluid Tech Systems)**, 73, Tribhuvan Industrial Estate, Opp. Road No. 11, Kathwada GIDC, Kathwada, Ahmedabad - 382 430 (hereinafter referred to as the 'Respondent').

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date (<i>'impugned orders'</i>)
GAPPL/ADC/GSTD/175/2022- APPEAL Dated 03.02.2022	48/2021-22 Dated 07.01.2022	ZV2408210237209 Dated 17.08.2021
GAPPL/ADC/GSTD/176/2022- APPEAL Dated 03.02.2022	47/2021-22 Dated 07.01.2022	ZY2408210237110 Dated 17.08.2021

2. Briefly stated the fact of the case is that the respondent registered under GSTIN No.24AEHPP5794D1ZA has filed following refund claims for refund of ITC accumulated due to export without payment of tax.

Sr. No.	Period	Amount of Refund claims
1	October 2019 to March 2020	Rs.6,75,849/-
2	April 2020 to December 2020	Rs.18,67,000/-

After verification the *adjudicating authority* sanctioned refund to the *respondent*. During review of refund claims 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 (4) 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 which is the invoice value of goods exported, whereas as per shipping bill FOB value the turnover of zero rated supply was lower. 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 as per below table instead of refund sanctioned by the *adjudicating authority*



the respondent. Thus there is excess sanction of refund to the respondent which is required to be recovered along with interest. The details are as under :

(Amount in Rs.)

Period of Refund Period	Turnover of Zero rated supply of goods (Invoice Value) (1)	Turnover of Zero rated supply of goods (FOB Value) (2)	Net ITC (3)	Adjusted Total Turnover (4)	Refund Amount sanctioned (Invoice Value) (1*3/4)	Refund Amount admissible (FOB Value) (2*3/4)	Excess Refund amount sanctioned
October'19 to March'20	4513066	4310182	5107119	34103403	675849	645466	30383
April'20 to December'20	13174878	12648297	8500160	59960132	1867000	1793067	73933

3. In view of above the *appellant* filed the present two appeals on following grounds:

The *adjudicating authority* failed to consider the correct value of zero rated turnover while granting the refund claims 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. Accordingly, the Adjudicating Authority has sanctioned the excess amount of refunds to the Respondent as mentioned in the above table. Therefore, the *appellant* prayed to set aside the *impugned orders* wherein he has erroneously sanctioned refund of Rs.6,75,849/- & Rs.18,67,000/- instead of Rs.6,45,466/- & Rs.17,93,067/- respectively 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.30,383/- and Rs.73,933/- with interest and to pass any other orders as deem fit in the interest of justice.

4. Personal hearing in the present matter was held on dated 26.08.2022, wherein Mr. Kalrav Patel, CA appeared on behalf of the Respondent as authorised representative on virtual mode. During PH he has stated that they want to submit their reply, the same was approved and 03 working days period was granted for the same. Accordingly, the Respondent has submitted their reply on 29.08.2022. In their reply the Respondent has submitted that -

- As per the grounds of appeal the refunds are not proper in view of Para 47 of the Circular No. 125/44/2019-GST dated 18.11.2019.
- By citing above grounds, the department has taken the lower value by comparing the FOB and Invoice Value. However, CBIC circular nowhere refers to FOB value to be compared with taxable value in export invoice; that it refers to "export value" in the shipping bill, that export value is not defined in CGST Act. However, rule 3 of Customs valuation rules, 2007 read with Section 14 of the Customs Act, 1962 stipulates value of export goods are the transaction value;
- That CIF value appearing in the Shipping Bills is the transaction value and not FOB value and therefore, CIF value needs to be treated as export value

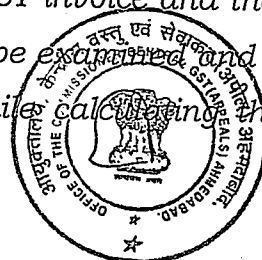


for comparison with taxable value in export invoice. The same issue was found in case of M/s. Balkrishna Industries Limited (OIA KCH-EXCUS-000-APP-004-TO-007-2018-GST-JC) where learned authority has considered CIF value for calculation of Turnover of zero rated supply and not the FOB value.

- Submitted copies of following documents and requested to recalculate the refund by considering lower of CIF value and Invoice value.
 - o Copy of export invoice along with shipping bills
 - o Copy of Circular 37/11/2018-GST
 - o OIA in case of M/s. Balkrishna Industries Limited
 - o Circular No. 125/44/2019-GST
 - o Notification No. 14/2022-Central Tax.

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 in this case appeal was filed against impugned orders wherein refunds of accumulated ITC due to export without payment of tax amounting to Rs.6,75,849/- & Rs.18,67,000/- were sanctioned. The appellant mainly by relying upon para 47 of the Circular No. 125/44/2019-GST dated 18.11.2019 has pointed out that the adjudicating authority has not considered the FOB Value i.e. lower value amongst the GST Invoice Value and corresponding Shipping Bill value and accordingly, granted excess amount of refund of Rs.30,383/- & Rs.73,933/- to the Respondent. For better appreciation of facts I reproduce Para 47 of Circular No.18.11.2019 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.



6. 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 i.e. 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. In the subject case, I find that Respondent is mainly contending that the CBIC Circular nowhere refers to FOB value to be compared with taxable value in export invoice. The Respondent has also referred Customs Valuation Rules, 2007 in their submission in support of their defence. However, the Respondent has not produced any such documents which suggest that there is no difference between the invoice value (transaction value) and Shipping Bill value; or the Shipping Bill value i.e. FOB value is not lower than the corresponding invoice value as considered by the appellant in the present appeals. Accordingly, as per aforesaid Circular the FOB value of goods which is lower among the two values need to be taken into account for determining admissible refund amount. Further, I find that the Respondent has submitted the copy of Notification No. 14/2022-Central Tax dated 05.07.2022 with their reply dated 29.08.2022. The relevant portion of Notification is reproduced as under :

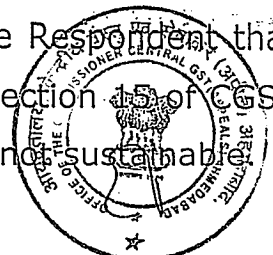
G.S.R... (E). -In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

8. In the said rules, in rule 89, —

(c) in sub-rule (4), the following Explanation shall be inserted, namely: -

“Explanation. — For the purposes of this sub-rule, the value of goods exported out of India shall be taken as —(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or(ii) the value declared in tax invoice or bill of supply, whichever is less.”

Therefore, I find that the appellant/department has correctly pointed out in the present appeals that FOB value of goods i.e. lower value needs to be taken as turnover of zero rated supply of goods for determining the admissible refund amount which is in accordance with the above Circular dated 18.11.2019. Consequently, submission made by the Respondent that they had rightly considered the transaction value as per Section 15 of CGST Act, 2017 for computing refund is devoid of any merit and not sustainable.



7. In view of facts of the case, submission made by the Respondent and discussion made herein above, I hold that the Adjudicating Authority failed to consider the turnover of zero rated supply goods based on FOB value of goods which is the lower value in accordance with Circular No. 125/44/2019-GST dated 18.11.2019. Accordingly I hold that the adjudicating authority has wrongly arrived the admissible refund at Rs.6,75,849/- & Rs.18,67,000/- respectively for the period Oct.'19 to March'20 & April'20 to Dec.'20 and thereby sanctioned excess amount of refund amounting to Rs.30,383/- & Rs.73,933/- respectively. Therefore, I hold that the impugned orders passed by the adjudicating authority sanctioning excess amount of refund are not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned orders to the extent of sanction of excess amount of refund of Rs.30,383/- & Rs.73,933/- and allowed the appeals filed by the appellant/department to that extent only.

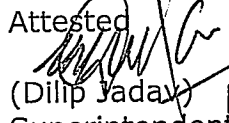
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

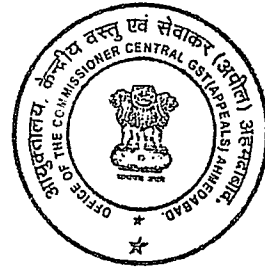
The appeals filed by the *appellant/department* stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 11.01.2023

Attested

(Dillip Yadav) 13.01.23
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

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

Appellant

M/s. Manshukhbhai Bhagwanbhai Patel
(Fluid Tech Systems),
73, Tribhuvan Industrial Estate,
Opp. Road No. 11, Kathwada GIDC, Kathwada,
Ahmedabad - 382 430

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 & C. Ex, Division-V, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
- ✓ 7. P.A. File

