



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- 20230164SW0000999C1B

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/232/2022 -APPEAL

7561-66

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-213/2022-23**

दिनांक Date : **18-01-2023** जारी करने की तारीख Date of Issue : **19-01-2023**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

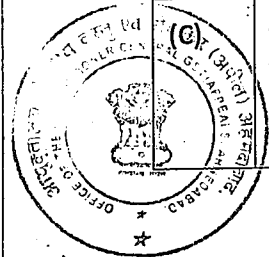
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZQ2409210275066 DT. 21.09.2021** issued by The Assistant Commissioner, CGST & CX, Division-IV, Ahmedabad South

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

Appellant	Respondent
Assistant Commissioner, CGST, Division-IV, Ahemdabad South	M/s. Kedarnath Agro Industries, 343/1, Village Naj, Bareja Road, Ta. Dascroi, Ahmedabad-382425

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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.
	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



## ORDER-IN-APPEAL

### Brief Facts of the Case :

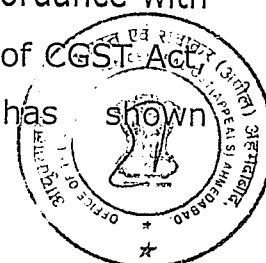
The following appeal has been filed by the Assistant Commissioner, CGST, Division - IV, Ahmedabad South (hereinafter referred as '*appellant*' / '*department*') in terms of Review Order issued under Section 107 of the CGST Act, 2017 (hereinafter referred as '*the Act*') by the Reviewing Authority against RFD-06 Order (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, CGST, Division - IV, Ahmedabad South (hereinafter referred as '*adjudicating authority*') in the case of **M/s. Kedarnath Agro Industries**, 343/1, Village Naj, Bareja Road, Ta. Dascroi, Ahmedabad - 382425 (hereinafter referred as '**Respondent**').

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date
GAPPL/ADC/GSTD/232/2022- APPEAL Dated 23.02.2022	56/2021-22 Dated 15.02.2022	ZQ2409210275066 Dated 21.09.2021

2. Brief facts of the case are that the '*Respondent*' holding GSTN No. 24AAOFK4296N1ZL had filed refund claim of Rs.10,00,000/- for the period November 2019 to January 2021 for ITC (Input Tax Credit) accumulated due to export without payment of tax vide ARN No. AA2408211362887 dated 26.08.2021 under Section 54(3) of the CGST Act, 2017. The said refund claim was sanctioned by the *adjudicating authority* vide Order No. ZQ2409210275066 dated 21.09.2021 (RFD 06).

During Review of the 'Impugned Order' dated 21.09.2021 the department has observed as under :

3. During review of said refund claim, it was observed that the Respondent has filed refund claim for the period November 2019 to January 2021 for refund of ITC accumulated due to export without payment of tax. After verification the *adjudicating authority* has found the claim in order and accordingly sanctioned refund of Rs.10,00,000/- to the *respondent* vide impugned order. 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 (4) of CGST Rules, 2017 read with Section 54 (3) of CGST Act, 2017. It was observed that the Respondent has shown



Rs.13,77,16,481/- as "Adjusted Total Turnover" in RFD01; whereas the actual "Adjusted Total Turnover" as per GSTR 3B returns for the said period of November 2019 to January 2021 is Rs.35,58,54,605/-. Also the claimant has not reversed ITC on the percentage of exempted clearance during the 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 :

% OF EXEMPTED CLEARANCE TO TOTAL TURNOVER AS PER GSTR 3B FOR THE PERIOD NOVEMBER 2019 TO JANUARY 2021				
Local Clearance Rs.	Export Clearance Rs.	Exempted Clearance Rs.	Total Clearance Rs.	% of Exempted clearance to Total clearance
42415344	313439261	221727998	577582603	38.3889

ITC TAKEN, LIABLE TO BE REVERSED AND AVAILABLE FOR REFUND FOR THE PERIOD NOVEMBER 2019 TO JANUARY 2021		
NET ITC	ITC liable to be reversed @ 38.3889%	Net ITC available for refund calculating Rs.
2837116	1089138	1747978

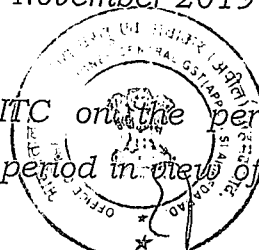
By taking actual "Adjusted total turnover" and "Net ITC" as narrated above, the amount of refund which is available to the claimant as per Rule 89(4) of the CGST Rules, 2017 is calculated below for the period November 2019 to January 2021 :

Turnover of Zero rated supply of goods and services (1)	Adjusted total turnover (2)	Net ITC (3)	Max. Refund amt. to be claimed (4) = 1*3/2	Amount sanctioned	(Amt. in Rs.)
					Amount to be recovered
137716481	355854605	1747978	676471	1000000	323529

Therefore, it is required to recover the said amount of erroneous refund of Rs.3,23,529/- alongwith interest and penalty from the claimant.

4. 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".
- The claimant has shown Rs.13,77,16,481/- as "Adjusted Total Turnover" in RFD01, whereas the actual "Adjusted Total Turnover" as per GSTR 3B returns for the said period of November 2019 to January 2021 is Rs.35,58,54,605/-.
- Also, the claimant has not reversed ITC on the percentage of exempted clearance during the captioned period in view of Rule 42 of

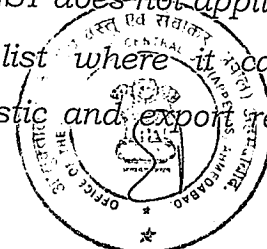


- the CGST Rules, 2017 read with Section 17(2) of the CGST Act, 2017; thereby inflating the Net ITC available for refund calculation. The actual Net ITC comes to Rs.17,47,978/- instead of Rs.28,37,116/- shown in RFD01.
- iv. By taking these values of actual "adjusted total turnover" and also actual "Net ITC" available for refund calculation, the refund available comes to Rs.6,76,471/-.
  - v. Thus, the amount of Rs.3,23,529/- (Rs.10,00,000/- minus Rs.6,76,471/-) has wrongly been sanctioned as excess refund to the claimant, which is required to be recovered along with interest and penalty as the claimant has mis-stated by showing wrong values of "adjusted total turnover" and also "Net ITC".
  - vi. In view of above grounds the appellant has made prayer to set aside the impugned order wherein the adjudicating authority has erroneously sanctioned Rs.10,00,000/- instead of Rs.6,76,471/- under Section 54 (3) of CGST Act, 2017 ; to pass order directing the said original authority to recover and appropriate the amount erroneously refunded of Rs.3,23,529/- with interest and penalty; to pass any other order(s) as deemed fit in the interest of justice.

### **Personal Hearing :**

5. Personal Hearing in the matter was held on 30.08.2022 though virtual mode. Mr. Naitik Shah, Advocate was appeared on behalf of the 'Respondent' as authorized representative. During PH he has stated that they want to submit additional submission, which was approved and 03 working days period was granted for the same. The Respondent has accordingly, submitted their submission through e-mail id [navinadvocate2007@gmail.com](mailto:navinadvocate2007@gmail.com) dated 02.09.2022. The Respondent in their said email submitted that -

- i. ITC claimed is only against the export of goods. The documents and list of ITC were already submitted before the department at the time of refund process. Whereas, Rs.10,54,376/- difference of 3B and 2A respondent did not claim excess ITC of Rs.10,54,376/- due to majority of the sales were exempted. And respondent have claimed only Rs.28,37,116/- ITC in 3B which were only related to export of goods and taxable sales. Hence, Rule 42 of CGST does not applicable, therefore respondent hereby submits ITC list where it can be construed that the mainly ITC are from Logistic and export related expenses.



- ii. Further, as considered by the department in present appeal the zero rated supply only Rs.13,77,16,471/-, adjusted total turnover Rs.35,58,54,605/-, and ITC after reversal Rs.17,47,978/-, so, maximum refund arises Rs.6,76,471/-. However, department/appellant failed to take actual zero rated turnover Rs.31,34,39,261/- in place of Rs.13,77,16,471/- and suppose take zero rated export turnover Rs. 31,34,39,261/- and Adjusted Turnover and ITC after reversal remain same as for calculation, even though maximum refund would be available Rs.15,60,641/-, which is more than Rs.10,00,000/-. Hence, as per the above facts, it construed that respondent has not taken any erroneous refund.
- iii. Submitted purchase register and sales register for November 2019 to January 2021.

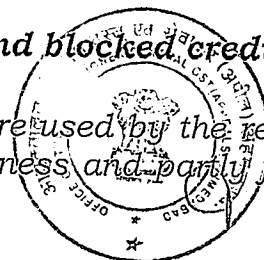
### **Discussion and Findings :**

6. 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 Respondent had filed a refund claim of accumulated ITC due to export without payment of tax for the period November 2019 to January 2021 and same was sanctioned by the proper officer on 21.09.2021. I find that the main issue involved in the present matter is that the Adjusted Total Turnover considered for calculation of admissible refund was not as per the GSTR 3B. The Net ITC considered for calculation of admissible amount of refund was also not correct, as the Respondent has not reversed the ITC on the percentage of exempted clearance during the captioned period in view of Rule 42 of the CGST Rules read with Section 17(2) of the CGST Act.

7. Further, I find that Respondent in the present matter contended that they have claimed ITC related to export of goods and taxable sales only, hence, Rule 42 of CGST Rules does not applicable and in support of same the Respondent has produced the ITC list. Accordingly, I have referred the Rule 42 of the CGST Rules and Section 17(2) of the CGST Act, 2017. The Section 17(2) of the CGST Act, 2017 is reproduced as under :

### **Section 17. Apportionment of credit and blocked credits.-**

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other



*purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.*

***(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.***

On going through the List of ITC produced by the Respondent, I find that the Respondent has taken ITC of Inputs & Input Services based on invoices issued by The Kalupur Commercial Co. Op., New India Assurance, TCI Freight, Guj. Chamber of Commerce, Hardip Shipping Logistics, Cargo Trans Maritime, Seabird Marine, Guj. Jute Corporation etc. However, from the said list it is not ascertainable that ITC taken for goods & services, are not used for effecting the exempt supplies. Further, I find that the Respondent has not produced any such documents/evidence in the present appeal proceedings which substantiate their claim that the goods & Services for which ITC taken are not used in effecting the exempt supplies. Therefore, I do not find any force in this regard in Respondent's contention and accordingly I am of the view that the Respondent has not considered the correct amount of Net ITC for calculating the admissible amount of Refund as did not reversed ITC on the percentage of exempted clearance during the relevant period in view of Rule 42 of the CGST Rules, 2017 read with Section 17(2) of the CGST Act, 2017.

8. Further, I find that Respondent in the present matter contended that Department/Appellant failed to take actual zero rated turnover Rs.31,34,39,261/- in place of Rs.13,77,16,471/-. However, I do not find any such statutory documents/evidence produced by the Respondent which substantiate their claim that actual zero rated turnover is Rs.31,34,39,261/-. In fact I find that in the present appeal the department/appellant is disputing about the correct amount of Adjusted Total Turnover to be considered for calculating the admissible Refund amount. However, I do not find any coherent/logical or reasoned submission of the Respondent regarding Adjusted total turnover. The department/appellant in the present appeal raised the point that the Respondent has shown Rs.13,77,16,481/- as "Adjusted



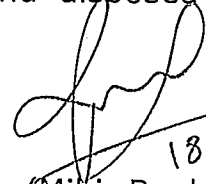
Total Turnover" in RFD01, whereas the actual "Adjusted Total Turnover" as per GSTR 3B returns for the said period of November 2019 to January 2021 is Rs.35,58,54,605/-.

9. In view of above, I do not find any force in the contention of the Respondent and therefore, I find that the adjudicating authority has sanctioned the refund claim in the present matter without considering the correct amount of Net ITC and Adjusted Total Turnover as discussed in above paras, which resulted into sanctioned of erroneous Refund of Rs.3,23,529/-.

10. 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*' to the extent of sanction of refund of Rs.3,23,529/- only.

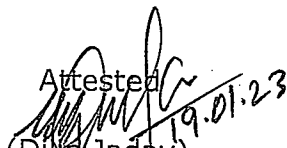
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

  
18/01/23  
(Mihir Rayka)

Additional Commissioner (Appeals)



Attested  
  
19.01.23  
(Dimp Jadav)  
Superintendent (Appeals)  
Central Tax, Ahmedabad

By R.P.A.D.

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

Appellant

M/s. Kedarnath Agro Industries,  
343/1, Village Naj, Bareja Road,  
Ta. Dascroi, Ahmedabad - 382425

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

