



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- 20230164SW0000321408

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/231/2022 -APPEAL / 7567 - 72

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-214/2022-23**
दिनांक Date : **19-01-2023** जारी करने की तारीख Date of Issue : **20-01-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

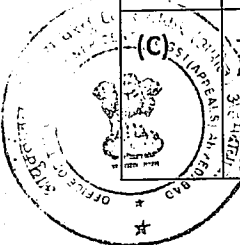
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZS2409210201244 DT. 15.09.2021** 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, Ahmedabad South	M/s. Meghmani Dyes and Intermediates LLP, 96,97,98,103,GIDC, Phase-II, Vatva, 4 th White Cross, Ahmedabad-382445

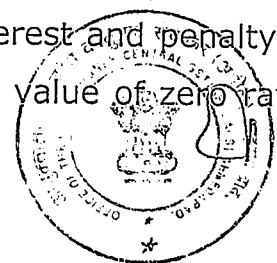
(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed 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 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 III, Ahmedabad South (hereinafter referred to as the 'Appellant/Department') has filed the appeal on 14.03.2022 offline in terms of Advisory No.9/2020 dated 24-9-2020 issued by the Additional Director General (Systems), Bengaluru against Order No. ZS2409210201244 dated 15.09.2021 (RFD 06) (hereinafter referred to as the *Impugned Order*) passed by the Assistant Commissioner, CGST, Division III, Ahmedabad South (hereinafter referred to as the *Adjudicating Authority*) sanctioning refunds to **M/s. Meghmani Dyes and Intermediates LLP**, 96, 97, 98, 103, GIDC, Phase-II, Vatva, 4th White Cross, Ahmedabad - 382 445 (hereinafter referred to as the 'Respondent').

2. Briefly stated the fact of the case is that the Respondent registered under GSTN No.24ABCFM5140J1ZG has filed refund claim for refund of ITC accumulated due to export without payment of tax. The said refund claim is filed vide AA2408211243900 dated 24.08.2021 for Rs.9,85,51,348/- for the period from January 2021 to March 2021 under Section 54(3) of the CGST Act, 2017. After verification of the refund claim the *adjudicating authority* has found the claim in order and accordingly sanctioned the same to the *Respondent*. During review of refund claim so sanctioned, it was observed by the department/appellant 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 as Rs.90,40,90,890/- which is the invoice value of goods exported, whereas as per shipping bill FOB value, the turnover of zero rated supply is Rs.88,07,94,158/-. 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 refund admissible comes to Rs.9,60,11,864/- instead of Rs.9,85,51,348/- sanctioned by the sanctioning authority. Thus there is excess sanction of refund of Rs.25,39,484/- to the respondent which is required to be recovered along with interest and penalty as the Respondent has misled the department by taking wrong value of zero rated turnover.



(Amount in Rs.)

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
904090890	880794158	204599455	1876955585	98551348	96011864	2539484

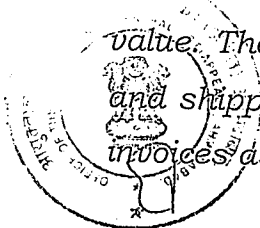
3. In view of above the *appellant* filed the present appeal on 14.03.2022 on following grounds:

The *adjudicating authority* failed to consider the correct 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. Accordingly, the Adjudicating Authority has sanctioned the excess amount of refund to the Respondent as mentioned in the above table. Therefore, the *appellant* prayed to set aside the *impugned order* wherein the adjudicating authority has erroneously sanctioned refund of Rs.9,85,51,348/- instead of Rs.9,60,11,864/- under Section 54 (3) of CGST Act, 2017; to pass an order directing the original authority to demand and recover the amount erroneously refunded of Rs.25,39,484/- (Rs.9,85,51,348/- minus Rs.9,60,11,864/-) with interest and penalty; to pass any other order(s) as deemed fit in the interest of justice.

4. Personal hearing in the present matter was held on dated 24.08.2022, wherein Mr. Manohar Maheshwari, Sr. GM appeared on behalf of the Respondent as authorised representative on virtual mode. During PH he has stated that they want to submit written submissions, which was duly approved and 05 working days period was granted for the same. Accordingly, the Respondent has submitted their written submission on 29.08.2022. In their written submission the Respondent has submitted that -

- *The Review Order and consequent tax appeal against the impugned order is based on misstatement of the facts and misunderstanding of the relevant law and circular issued by the Board (CBIC).*
- *Referred Section 16(3) of the IGST Act, 2017, Section 54 of the CGST Act, 2017, Section 15 of the CGST Act, 2017, Rule 89(4) of the CGST Rules, 2017.*
- *Referred Para 47 of the Circular No. 125/44/2019-GST dated 18.11.2019, said Circular states that the transaction value as declared in the tax invoice should be considered and in case of variation in the value declared in tax invoice and shipping bill, the lower of two should be considered.*

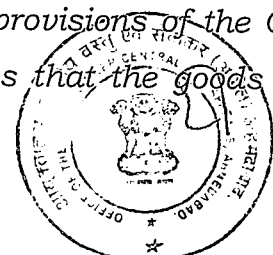
This Circular nowhere refers about the 'FOB Value' but the transaction value. They have declared the same transaction value in the tax invoice and shipping bills and in support of same submitted the copies of few tax invoices as well as relevant shipping bill.



- There is different purpose to bifurcate the value in to different component for various purpose like monitoring valuation or granting other export benefits. However, refund of accumulated ITC in respect of export of goods without payment of tax under Section 54 read with Rule 89(4) is linked to the transaction value and not to the FOB value as it being made out to be by the Revenue in their appeal as there is no reference of FOB Value in CGST Rules governing accumulated ITC refund.
- The transaction value as declared in tax invoice is actually paid by the recipient to the supplier and need to be considered for the purpose of working out the refund. The transaction value would be based on the commercial agreement between the supplier and customers. It can be CIF, CFS, FOB, Ex works etc. and based on that the buyer makes the payment to supplier.
- Referred Notification 14/2022-Central Tax dated 05.07.2022 vide which amended the Rule 89 – governing refund of accumulated ITC. The amendment itself indicates that there was no application of terms 'FOB' in the Rule 89 prior to this amendment and that was the reason it was added to the said rule by way of amendment and therefore, being effective from 5th of July, 2022 i.e. prospective in nature, cannot be made effective prior to the date of this notification.
- The tax appeal of revenue is bad in law and not to be allowed in the interest of justice.

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 order wherein refund of accumulated ITC due to export without payment of tax amounting to Rs.9,85,51,348/- was 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.25,39,484/- 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 Section 16(3) of the IGST Act, 2017, Section 15 & Section 54 of the CGST Act, 2017 as well as Rule 89(4) of the CGST Rules, 2017 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 also referred Notification No. 14/2022-Central Tax dated 05.07.2022 and submitted that said notification is effective from 05.07.2022, therefore, cannot be made effective prior to the date of this notification. The relevant portion of Notification is reproduced as under :

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.

Further, I find that the *department/appellant* in the present appeal produced a list of relevant total 267 invoices & Shipping Bills and by comparing the

value declared in said Tax Invoices and corresponding Shipping Bills/Bill of Exports, lower value of the two values taken into account for calculating the eligible amount of refund. Therefore, I find that the *appellant/department* has correctly pointed out in the present appeal 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.9,85,51,348/- for the period January'2021 to March'2021 and thereby sanctioned excess amount of refund amounting to Rs.25,39,484/-. Therefore, I hold that the *impugned order* passed by the *adjudicating authority* sanctioning excess amount of refund is not legal and proper and deserve to be set aside. Accordingly, I set aside the *impugned order* to the extent of sanction of excess amount of refund of Rs.25,39,484/- and allowed the appeal filed by the *appellant/department* to that extent only.

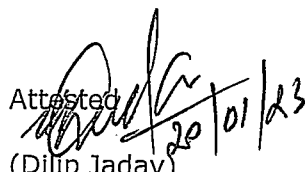
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

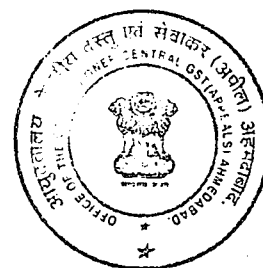
The appeal filed by the *appellant/department* stands disposed of in above terms.


19/01/23
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 19.01.2023

Attested

20/01/23
(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

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

Appellant

M/s. Meghmani Dyes and Intermediates LLP,
96, 97, 98, 103, GIDC, Phase-II, Vatva,
4th White Cross, Ahmedabad - 382 445

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

