



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 ३८००१९.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 202302645W00000085D5

प्रचारित आर ए.डी. प्रारूप

क फाइल संख्या : File No : GAPPL/ADC/GSTD/261, 262, 270, 271 & 272/2022-APPEAL / 78x2-23ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-221 to 225/2022-23दिनांक Date : 31-01-2023 जारी करने की तारीख Date of Issue : 01-02-2023

श्री मिहिर रायका अग्र आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. ZX2401220117714 DT. 13.01.2022, ZZ2401220117758 DT. 13.01.2022, ZT2401220139081 DT. 17.01.2022, ZP2411210240580 DT. 22.11.2021 & ZV2411210240702 DT. 22.11.2021 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. Nicheem Industries, Shed No. C/1/265, Phase-II, GIDC Vatva, Ahmedabad-382445

(A)	इस आदेश(अपील) से प्रभावित 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 अपीलार्थी प्राधिकारी को अपील दायर करने से संबंधित विवरणों 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 III, 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 III, Ahmedabad South (hereinafter referred to as the *Adjudicating Authority*) sanctioning refunds to **M/s. Nichem Industries**, Shed No. C/1/265, Phase-II, GIDC Vatva, Ahmedabad - 382 445 (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/261/2022- APPEAL Dated 11.05.2022	04/2022-23 Dated 28.04.2022	ZP2411210240580 Dated 22.11.2021
GAPPL/ADC/GSTD/262/2022- APPEAL Dated 11.05.2022	05/2022-23 Dated 28.04.2022	ZV2411210240702 Dated 22.11.2021
GAPPL/ADC/GSTD/270/2022- APPEAL Dated 27.06.2022	14/2022-23 Dated 08.06.2022	ZX2401220117714 Dated 13.01.2022
GAPPL/ADC/GSTD/272/2022- APPEAL Dated 27.06.2022	16/2022-23 Dated 10.06.2022	ZZ2401220117758 Dated 13.01.2022
GAPPL/ADC/GSTD/271/2022- APPEAL Dated 27.06.2022	13/2022-23 Dated 08.06.2022	ZT2401220139081 Dated 17.01.2022

2. Briefly stated the fact of the case is that the respondent registered under GSTIN No.24AAECJ1198H1ZK 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	June 2020	Rs.13,16,797/-
2	August 2020 to September 2020	Rs.96,92,235/-
3	October 2020	Rs.14,18,625/-
4	November 2020	Rs.79,29,266/-
5	December 2020	Rs.62,85,845/-

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 FOB value of goods exported in adjusted total turnover. However, on perusal of the GSTR 1 return of respective period filed by Respondent, they have shown two separate values of each export consignment; one is the invoice value and the other is shipping bill FOB value. Thus, taking the Actual Adjusted total turnover (considering zero rated turnover as per Invoice Value + Local Turnover) 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 to 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	Adjusted total Turnover as per RFD 01 (1)	Adjusted total Turnover as per GSTR1 (2)	Net ITC (3)	Zero Rated Turnover (4)	Refund Amount sanctioned (3*4/1)	Refund Amount admissible (3*4/2)	Excess Refund amount sanctioned
June'20	83429414	83889968	8207448	17688927	1316797	1309942	6855
August'20 to September'20	276789059	277752943	54554714	49174392	9692235	9688665	33670
October'20	151959080	162130562	23257779	9288855	1410825	1417026	1599
November'20	138742610	138501569	19469830	68717560	7929295	7828565	100701
December'20	190949017	182344603	31762877	37786773	6282534	6239917	45617

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

The *adjudicating authority* failed to consider the value of zero rated turnover as per invoice value in Actual Adjusted Total Turnover while granting the refund claims of ITC accumulated due to export of goods without payment of tax. The *appellant/département* has referred the definition of "Adjusted Total Turnover" as per Rule 89(4) of the CGST Rules, 2017 as has been defined in Section 2(112) of the CGST Act, 2017 and contended in the present appeals that taxable value should be taken as per Section 15 of the CGST Act, 2017. 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.13,16,797/-, Rs.96,92,235/-, Rs.14,18,625/-, Rs.79,29,266/- & Rs.62,82,534/- instead of Rs.13,09,942/-, Rs.96,58,565/-, Rs.14,17,026/-, Rs.78,28,565/- & Rs.62,36,917/- respectively 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.6,855/-, Rs.33,670/- Rs.1,599/-, Rs.1,00,701/- and Rs.45,617/- 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 14.11.2022, wherein Mr. Harnish P. Modh, CA appeared on behalf of the Respondent as authorised representative. During PH he has submitted Memorandum/Cross Objection separately against each appeal. He has further stated that they have nothing more to add to it.

The Respondent in their aforesaid Memorandum/Cross Objection has referred Section 2(5) of the IGST Act, 2017, Section 16 of the IGST Act, 2017 as well as Rule 89 of the CGST Rules, 2017. The Respondent has also referred CBIC's Circular No. 125/44/2019-GST dated 18.11.2019. The Respondent has mainly contended that -



- Contention of department/appellant regarding the invoice value to be considered for the purpose of Adjusted Turnover for calculation of refund claim as per Rule 89 of the CGST Rules, 2017 read with Circular No. 125/44/2019-GST dated 18.11.2019 is against the objective of the GST law and nullifies the objective of the same.
- The underlying objective of GST as per provisions of Section 16(3) of the IGST Act, 2017, is to refund the entire amount of unutilized input tax credit used for making zero rated supply under bond or letter of undertaking. This underlying objective gets defeated by the contention of the appellant/department and the same is unwarranted and bad in law.
- As per definition provided in Rule 89 of the CGST Rules, 2017 the Adjusted Turnover includes zero rated turnover and hence the value considered for the purpose of zero rated turnover needs to be considered for the purpose of calculation of adjusted total turnover and **there cannot be two values for same underlying transaction.**
- Relied upon case of M/s. Sayona Enterprise. (AHM-CGST-002-APP-ADC-019 to 021/2022-23 dated 26.05.2022.

In view of above submissions, the Respondent has made prayer that the appeals filed by the department/appellant may please be quashed and set aside in the interest of justice.

Discussion and Findings:

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 the present case appeals are filed against impugned orders wherein refunds of accumulated ITC due to export without payment of tax amounting to Rs.13,16,797/-, Rs.96,92,235/-, Rs.14,18,625/-, Rs.79,29,266/- & Rs.62,82,534/- were sanctioned. The appellant/department in the present appeals mainly contended that the Adjusted Total Turnover is inclusive of Zero Rated Turnover and Local Turnover and the adjudicating authority has considered value of zero rated turnover as per FOB Value Instead of Invoice Value and accordingly, granted excess amount of refund of Rs.6,855/-, Rs.33,670/- Rs.1,599/-, Rs.1,00,701/- and Rs.45,617/- to the Respondent.

6. I refer para 4 of CBIC Circular NO.147/03/2021-GST dated 12-3-2021, wherein Board has given guidelines for calculation of adjusted total turnover in an identical issue as under :

4. The manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules, 2017.

4.1 Doubts have been raised as to whether the restriction on zero rated supply of goods to 1.5 times the value of like goods domestically



supplied by the same or, similarly placed, supplier, as declared by the supplier, imposed by amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dated 23.03.2020, would also apply for computation of "Adjusted Total Turnover" in the formula given under Rule 89 (4) of CGST Rules, 2017 for calculation of admissible refund amount.

4.2 Sub-rule (4) of Rule 89 prescribes the formula for computing the refund of unutilised ITC payable on account of zero-rated supplies made without payment of tax. The formula prescribed under Rule 89 (4) is reproduced below, as under:

"Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC / Adjusted Total Turnover"

4.3 Adjusted Total Turnover has been defined in clause (E) of sub-rule (4) of Rule 89 as under:

"Adjusted Total Turnover" means the sum total of the value of- (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding- (i) the value of exempt supplies other than zero-rated supplies; and (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.'

4.4 "Turnover in state or turnover in Union territory" as referred to in the definition of "Adjusted Total Turnover" in Rule 89 (4) has been defined under sub-section (112) of Section 2 of CGST Act 2017, as: "Turnover in State or turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess"

4.5 From the examination of the above provisions, it is noticed that "Adjusted Total Turnover" includes "Turnover in a State or Union Territory", as defined in Section 2(112) of CGST Act. As per Section 2(112), "Turnover in a State or Union Territory" includes turnover/ value of export/ zero-rated supplies of goods. The definition of "Turnover of zero-rated supply of goods" has been amended vide Notification No.16/2020-Central Tax dated 23.03.2020, as detailed above. In view of the above, it can be stated that the said value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", need to be taken into consideration while calculating "turnover in a state or a union territory", and



accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule 89. Thus, the restriction of 150% of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "Adjusted Total Turnover" in Rule 89 (4) of the CGST Rules, 2017.

4.6 Accordingly, it is clarified that for the purpose of Rule 89(4), the value of export/ zero rated supply of goods to be included while calculating "adjusted total turnover" will be same as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in the said sub-rule.

Applying the above clarification, the value of turnover of zero rated supply of goods taken towards turnover of zero rated supply of goods need to be taken as value of zero rated supply of goods in adjusted total turnover in the formula.

7. Further, I find that as per definition of adjusted total turnover, defined in clause (E) of sub-rule (4) of Rule 89, the adjusted total turnover includes value of all outward supplies of goods and services made during the relevant period including zero rated (export) supply of goods but exclude value of inward supplies which are liable to reverse charge. Thus, in the formula prescribed under Rule 89 (4) of CGST Rules the value of zero rated turnover of goods comes at numerator as well as in total adjusted turnover at denominator. In identical cases of refund the above Circular envisage to adopt the same value of export/zero rated supply of goods in turnover of zero rated supply of goods as well as in adjusted total turnover in the formula. In the present matter in all five appeals, the value of zero rated turnover is considered as FOB value as per shipping bill by the appellant/department. However, the value of zero rated turnover in adjusted turnover is taken as per GSTR 1; which imply that turnover of zero rated supply in adjusted total turnover is taken as invoice value. The details are as under :

Period of Refund Period	Adjusted total Turnover as per RFD 01			Adjusted total Turnover as per GSTR1		
	Zero rated turnover (As per FOB Value)	Local turnover	Total Adjusted Turnover	Zero rated turnover (As per Invoice Value)	Local turnover	Total Adjusted Turnover
June 20	17698927	65730487	83429414	18135481	65730487	83865968
Aug. 20 to Sep. 20	48174392	227813667	276788059	60139276	227813667	277752943
October 20	9284845	142890225	151959080	9440337	142890225	152130562
November 20	58717680	79025000	138742680	60476518	79025050	138601590
December 20	37789679	153159338	190948017	39185266	153159338	192344603

Apparently, this result in adopting two different values for same zero rated supply of goods, which I find is factually wrong method and not in consonance with Circular above. Therefore, I am of the considered view that the same value of zero rated supply of goods taken as turnover of zero rated supply of goods need to be taken in adjusted total turnover also towards value of zero rated (export) supply of goods.



8. Further, I find that the CBIC has issued a Notification No. 14/2022-Central Tax dated 05.07.2022. 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."

In the present matter I find that the Respondent has considered the FOB value for the Zero rated Turnover in the RFD-01 i.e. refund applications and the department/appellant is not disputing about the same in the present appeals. However, the department is disputing about the value of adjusted total turnover only.

9. In view of the above discussions, I do not find any force in the contentions of the appellant/department. Accordingly, I find that the impugned orders passed by the adjudicating authority are correct and as per the provisions of GST law. Accordingly, I do not find any reason to interfere with the decision taken by the adjudicating authority vide "impugned orders".

10. In view of above discussions, I reject all the five appeals filed by the appellant/department.

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.

(Minir Rayka)
Additional Commissioner (Appeals)

Date: 31.01.2023



Appointed
(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. Nichem Industries

Shed No. C/1/265, Phase-II,

GIDC Vatva, 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

