



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- 20230264SW0000810504

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/334/2022 -APPEAL / 8m92 - 97ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-237/2022-23**दिनांक Date : **17-02-2023** जारी करने की तारीख Date of Issue : **20-02-2023**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZT2412210009247 DT. 01.12.2021** issued by  
The Assistant Commissioner, CGST, Division-I, Ahmedabad South

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

Appellant	Respondent
The Assistant Commissioner, CGST, Division-I, Ahmedabad South	M/s. Paras Prafulkumar Sanghvi ( M/s. Dhanesh Foods), 79, Management Enclave Shopping Arcade, Mansi Tower, Satellite, Ahmedabad-380015

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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 <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 Deputy Commissioner, CGST, Division I Rakhial, Ahmedabad South (hereinafter referred to as the *appellant/department*) has filed the following appeal offline in terms of Advisory No.9/2020 dated 24-9-2020 issued by the Additional Director General (Systems), Bengaluru against Order No. ZT2412210009247 dated 01.12.2021 (hereinafter referred to as the *impugned order*) passed by the Assistant Commissioner, CGST, Division I Rakhial, Ahmedabad South (hereinafter referred to as the *adjudicating authority*) sanctioning refunds to **M/s. Paras Prafulkumar Sanghvi (Trade Name – M/s. Dhanesh Foods)**, 79, Management Enclave Shopping Arcade, Mansi Tower, Satellite, Ahmedabad – 380 015 (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/334/2022- APPEAL Dated 11.05.2022	03/2022-23 Dated 27.04.2022	ZT2412210009247 Dated 01.12.2021

2. Briefly stated the fact of the case is that the *Respondent* registered under GSTIN No. 24ATGPS9263C2ZI has filed refund claim on 23.10.2021 of accumulated ITC due to export without payment of tax for the period from July'20 to March'21 for refund of Rs.1,05,727/-. After verification the *Adjudicating Authority* sanctioned refund to the *Respondent*. During review of refund claim it was observed by the department 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.10,41,912/- which is the invoice value of goods exported, whereas as per shipping bill FOB value the turnover of zero rated supply is Rs.7,59,983/-. 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* to the *Respondent*. Thus there is excess sanction of refund of Rs.22,253/- to the *Respondent* which is required to be recovered along with



interest and penalty as the claimant has misled the department by taking wrong value of zero rated turnover. The details are as under :

(Amount in Rs.)

Turnover of Zero rated supply (Invoice Value) (1)	Turnover of Zero rated supply (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
1041912	759983	114440	1041912	105727	83474	22253

3. In view of above the *appellant* filed the present appeal on 11.05.2022 on the grounds that the *adjudicating authority* failed to consider the lower 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 which has resulted in excess payment of refund to the *Respondent* as mentioned in the above table. Therefore, the *Appellant/Department* has made prayer in the present appeal for set aside the *impugned order* wherein the *adjudicating authority* has erroneously sanctioned refund of Rs.1,05,727/- instead of Rs.83,474/- 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.22,253/- (Rs.1,05,727/- minus Rs.83,474/-) with interest & penalty ; and to pass any other order(s) as deem fit in the interest of justice.

4. Personal Hearing in the matter was held on 29.12.2022 wherein Mr. Paras P. Sanghvi, Proprietor appeared on behalf of the '*Respondent*' as authorized representative. During PH he has submitted the written submission dated 29.12.2022 and stated that they have nothing more to add to their written submissions made till date. The *Respondent* in their submission dated 29.12.2022 submitted that -

- They are engaged in business of export of goods. They have done export of Rs.10,41,912/- without payment of duty. Against said export they had filed refund claim of accumulated ITC of Rs.105727/- vide ARN dated 23.10.21. Said refund claim was sanctioned.*
- Manner of calculation of refund of ITC in case of zero rated supply without payment of tax is prescribed in Rule 89(4) of the CGST Rules, 2017. As per the formula prescribed under said rule it clearly shows that intention of Rule 89(4) is to give refund of ITC in proportion of zero rated sales only against total sales. Their 100 percent sales is zero rated sales only. Therefore, value of zero rated supply and adjusted total turnover is always going to be same and there will not be any difference.*
- Para 47 of Circular No. 125/44/2019-GST dated 18.11.19 required that "During the proceeding of refund claim, the value of the goods declared in the*

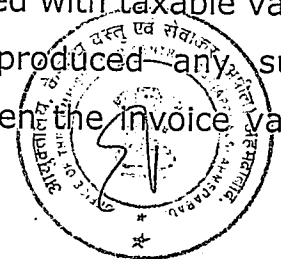


GST invoice and the value in the corresponding shipping bill/bill of export should be examined and the lower of the two values should be taken into account while calculating the eligible amount of refund." There is no mention of FOB value in Para 47 of the Circular. It speaks only about cases wherein there is difference in value declared. Whereas, in their case there is no difference in the value of the goods declared in GST invoice and value in corresponding shipping Bill/bill of export.

### **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 the present appeal is 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. The grounds in appeal is that the *Respondent* has taken invoice value as turnover of zero rated supply of goods for arriving admissible refund whereas the turnover of zero rated supply of goods should be FOB value as per shipping bill which is the lower value, in terms of para 47 of Circular No.125/44/2019-GST dated 18.11.2019 and accordingly the admissible refund comes to less than the sanctioned amount resulting in excess sanction of refund to the *Respondent*. I find that in the present appeal the *Respondent* has *inter-alia* contended that as per para 47 of Circular No.125/44/2019 the value declared in GST invoice and corresponding shipping bill/bill of export should be examined and that where there is any difference between the two values, the lower of the two values should be taken into account while calculating the eligible amount of refund ; and that in their case their 100% sales is zero rated sales only and therefore, value of zero rated supply and value of adjusted total turnover will always going to be same and there will not be any difference between the value declared in GST invoice and in corresponding shipping bill.

6. Further, on carefully going through the para 47 of Circular No. 125/44/2019-GST I find that the CBIC has 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 contending that the CBIC Circular nowhere refers to FOB value to be compared with taxable value in export invoice. 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/department 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. 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. However, I find that in the subject case, entire outward supply is zero rated supply turnover only and therefore, value of zero rated supply and value of adjusted total turnover will be same whether Invoice value to be considered or FOB value towards the zero rated turnover and adjusted total turnover in the formula prescribed under Rule 89(4) of the CGST Rules, 2017.

7. I also 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 turnover of 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*



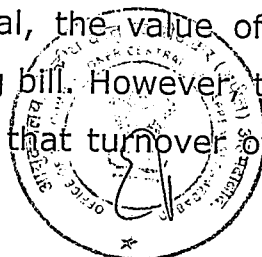
*value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter State supplies of goods or services or both 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 same 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 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 also in the formula. In other words, in cases where there is only zero rated supply of goods, turnover value of zero rated supply of goods at numerator and turnover value of zero rated supply in adjusted total turnover at denominator will be same. I find that in the present case the entire outward supply is zero rated supply turnover only.

**8.** I further find that as per definition of 'adjusted total turnover' defined in clause (E) of sub-rule (4) of Rule 89, 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. Accordingly, 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 the present appeal, the value of zero rated turnover was taken as FOB value as per shipping bill. However the adjusted turnover is taken as invoice value, which imply that turnover of zero rated

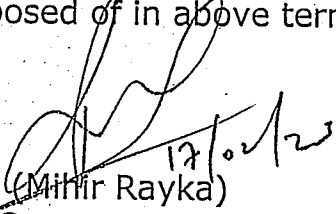


supply in adjusted total turnover is taken as per GSTR3B returns. Apparently, this result in adopting two different values for same zero rated supply of goods, which I find is factually wrong and not in consonance with statutory provisions. Therefore, I am of the considered view that the same value taken as turnover of zero rated supply of goods need to be taken in adjusted total turnover also. Accordingly, I find that the *adjudicating authority* has correctly sanctioned the refund claim to the *respondent* in the present matter. Therefore, I do not find any infirmity in the *impugned order* passed by the *adjudicating authority* sanctioning refund to the *Respondent*.

9. In view of above, I do not find any merit or legality in the present appeal filed by the *appellant/department* to set aside the *impugned order* and to order for recovery of excess refund of Rs.22,253/- on the grounds mentioned therein. Accordingly, I upheld the *impugned order* and reject the appeal filed by the *appellant/department*.

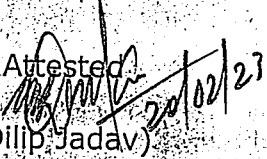
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 17.02.2023

Attested  
  
(Dilip Jadav)  
Superintendent (Appeals)  
Central Tax, Ahmedabad

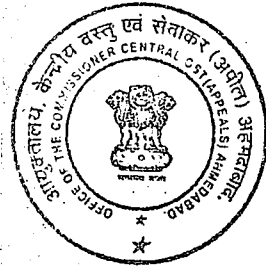
By R.P.A.D.

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

M/s. Paras Prafulkumar Sanghvi,  
(Trade Name - M/s. Dhanesh Foods),  
79, Management Enclave Shopping Arcade,  
Mansi Tower, Satellite, Ahmedabad - 380 015

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 Dy/Assistant Commissioner, CGST, Division-I Rakhial, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. P.A. File
7. Guard File



Appellant

Respondent



