



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/249/2022 -APPEAL

19200-9206

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-244/2022-23**

दिनांक Date : **28-02-2023** जारी करने की तारीख Date of Issue : **28-02-2023**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZQ24111210210402 DT. 18.11.2021** issued by The Assisnat Commissioner, CGST, Division-VIII, Ahmedabad South

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

Appellant	Respondent
The Astt Commissioner, CGST, Division-VIII, Ahmedabad South	M/s. Sun Mark Stainless Pvt. Ltd., 310, Ashirwad Paras, Opp. Krishna Bunglows, Corporate Road, 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) <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**

The Assistant Commissioner, CGST, Division VIII, Ahmedabad South (hereinafter referred to as the '*Appellant/Department*') in terms of Review Order No. 07/2022-23 dated 28.04.2021 issued under Section 107 of the CGST Act, 2017, has filed the present appeal offline in terms of Advisory No.9/2020 dated 24.09.2020 issued by the Additional Director General (Systems), Bengaluru. The appeal is filed on 05.05.2022 against the Order No. ZQ24111210210402 dated 18.11.2021 (hereinafter referred to as the '*Impugned Order*') passed in Form-GST-RFD-06 by the Assistant Commissioner, CGST, Division VIII, Ahmedabad South (hereinafter referred to as the '*Adjudicating Authority*') sanctioning refund to **M/s. Sun Mark Stainless Private Limited**, 310, Ashirwad Paras, Opp. Krishna Bunglows, Corporate Road, Satellite, Ahmedabad - 380 015 (hereinafter referred to as the '*Respondent*').

2. Brief facts of the case are that the '*Respondent*' holding GSTN No. 24AAUCS1323H1ZC had filed refund claim of Rs.10,50,61,343/- for the period of October 2021 for ITC (Input Tax Credit) accumulated due to export without payment of tax vide ARN No. AA24112107198L dated 17.11.2021 under Section 54(3) of the CGST Act, 2017. The said refund claim was sanctioned by the '*adjudicating authority*' vide Order No. ZQ24111210210402 dated 18.11.2021 (RFD 06).

During Review of the '*Impugned Order*' dated 18.11.2021 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 month of October 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.10,50,61,343/- 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 net ITC as Rs.15,85,60,288/-. However, Respondent has also supplied exempted goods valued Rs.3,42,42,861/- (as per GSTR 3B of October 2021). Therefore, proportionate ITC with respect to the exempted turnover out of the total turnover during the month of October 2021 was required to be reversed in view of Rule 42 of



the CGST Rules, 2017 read with Section 17(2) of the CGST Act, 2017; which has not been done by the Respondent. Therefore, they have inflated the Net ITC available for refund calculation, as shown below :

TURNOVER AS PER GSTR 3B FOR THE MONTH OF OCTOBER 2021				
	Local + Export Clearance Rs.	Exempted Clearance Rs.	Total Clearance Rs.	% of Exempted clearance to Total clearance
October 2021	924214307	34242861	958457168	3.5727%

ITC TAKEN, LIABLE TO BE REVERSED AND AVAILABLE FOR REFUND FOR THE MONTH OF OCTOBER 2021		
ITC taken	ITC liable to be reversed @ 3.5727%	Net ITC available for refund calculation Rs.
158560288	5664894	152895394

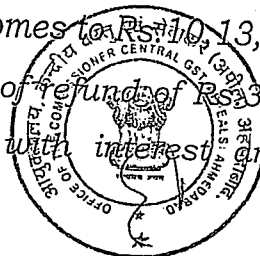
By taking actual "Net ITC" as narrated above, the amount of refund which is available to the claimant as per Rule 89(4) of the CGST Rules, 2017 is calculated below for the month of October 2021 :

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	Amount to be recovered (Amt. in Rs.)
612380296	924214306	152895394	101307809	105061343	3753534

Therefore, it is required to recover the said amount of erroneous refund of Rs.37,53,534/- alongwith interest and penalty from the claimant as they have misled the department by taking higher value of Net ITC.

4. In view of above, the *appellant/department* has filed the present appeal on the following grounds:

- The adjudicating authority has erred in calculating the refund amount by taking wrong value of "Net ITC".
- The claimant has shown Rs.15,85,60,288/- as "Net ITC". The claimant has supplied exempted goods valued Rs.3,42,42,861/- but they have not reversed ITC on the percentage of exempted clearance during 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.15,28,95,394/- instead of Rs.15,85,60,288/- shown in RFD01.
- By taking these values of actual "Net ITC" available for refund calculation, the refund available comes to Rs.10,13,07,809/-.
- Thus, there is an excess sanction of refund of Rs.37,53,534/- which is required to be recovered along with interest and penalty, as the



claimant has misled the department by taking wrong value of Net ITC in RFD01.

- v. In view of above grounds the appellant has made prayer to set aside the impugned order wherein the adjudicating authority has erroneously sanctioned Rs.10,50,61,343/- instead of Rs.10,13,07,809/- 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.37,53,534/- (Rs.10,50,61,343/- minus Rs.10,13,07,809/-) with interest and penalty ; to pass any other order(s) as deemed fit in the interest of justice.

5. In response to aforesaid grounds of appeal, the Respondent vide letter dated 13.09.2022 has submitted the reply on 22.09.2022. In their reply the Respondent has submitted that –

*“We have already reversal of proportionate common ITC with respect to the (MEIS License) Exempted Supply out of Total Turnover of the Year 2021-22. Here with attached DRC-03 of MEIS (exempted) Sales paid on 14.06.2022 and also attached calculation of DRC-03 & Common ITC Credit Ledger for your reference.”*

6. Personal Hearing in the matter was held on 08.12.2022 wherein Mr. Hardik Shah, C.A. was appeared on behalf of the ‘Respondent’ as authorized representative. During PH he has stated that they have nothing more to add to their written submissions till date.

### **Discussion and Findings :**

7. 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 and same was sanctioned by the proper officer vide impugned order dated 18.11.2021. I find that the main issue involved in the present matter is that the Net ITC considered for calculation of admissible amount of refund was 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.

8. Accordingly, I have referred the 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.

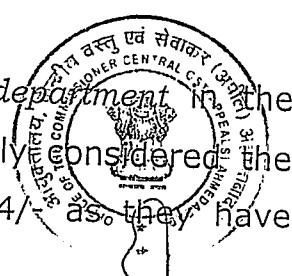
(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted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

I find that the Respondent in the present appeal proceedings not disputing or produced any documents/evidence that the goods & Services for which ITC taken are not used in effecting the exempt supplies. Therefore, I am of the view that the Respondent is liable to reversed ITC on the percentage of exempted clearance during the relevant period.

9. Further, I find that the Appellant/Department has stated in the present appeal that they have considered the value of exempted supplies as per the respective GSTR 3B i.e. of October 2021 and accordingly, they worked out the percentage of exempted clearance to total clearance. Accordingly, I find that the appellant/department has worked out the percentage of ITC liable to be reversed i.e. @ 3.5727%. Consequently, for calculating the admissible amount of refund the actual Net ITC comes to Rs.15,28,95,394/- instead of Rs.15,85,60,288/-.

However, I find that the Respondent in their reply dated 13.09.2022 submitted on 22.09.2022 stated that 0.45% ITC is liable to be reversed by taking into consideration sales turnover of April 2021 to September 2022. I find that the Department/Appellant has stated in the present appeal that they have considered the Turnover as per GSTR 3B of the October 2021. However, the Respondent has neither disputed about the same in their reply nor produced any such documents/evidence in support of their defense. I find that they simply worked out the ITC liable to be reversed by considering sales turnover of April 2021 to March 2022. Therefore, 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.

10. In view of above, I find that appellant/department in the present matter contended that Respondent has wrongly considered the Net ITC Rs.15,85,60,288/- instead of Rs.15,28,95,394/- as they have



supplied exempted goods also. But *Respondent* has not reversed the ITC on the percentage of exempted clearance during the captioned period. However, I do not find any such statutory documents/evidence produced by the *Respondent* which substantiates their claim that the Net ITC considered by them is correct. Further, I do not find any coherent/logical or reasoned submission of the *Respondent* as to why Net ITC Rs.15,28,95,394/- should not be considered for calculation of admissible amount of refund. Therefore, I find that the *department/appellant* has correctly pointed out in the present appeal that the *adjudicating authority* has considered the incorrect amount of Net ITC Rs.15,85,60,288/- instead of Rs.15,28,95,394/-.

**11.** 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 as discussed in above paras, which resulted into sanctioned of erroneous Refund of Rs.37,53,534/-.

**12.** In view of above discussions, I find that the *impugned order* is not legal and proper and therefore, require to be set aside to the extent of sanction of excess amount of refund. Accordingly, the appeal filed by the '*Department/Appellant*' is allowed and set aside the '*impugned order*' to the extent of sanction of excess amount of refund of Rs.37,53,534/- only.

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

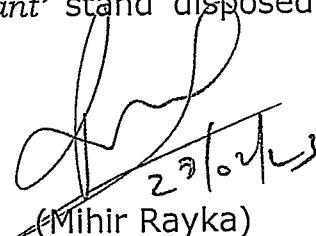
The Appeal filed by '*Department/Appellant*' stand disposed off in above terms.

Attested  
(Dip Jaday)  
Superintendent (Appeals)  
Central Tax, Ahmedabad

By R.P.A.D.

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

M/s. Sun Mark Stainless Private Limited,  
310, Ashirwad Paras, Opp. Krishna Bunglows,  
Corporate Road, Satellite,  
Ahmedabad - 380 015

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 28.02.2023



Appellant

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 Dy/Asstt. Commissioner, CGST, Division-VIII, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

