



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- 20230364SW000001010B

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/COM/STD/274/2022 -APPEAL 19669 - 74
 ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-261 /2022-23**
 दिनांक Date : **20-03-2023** जारी करने की तारीख Date of Issue : **20-03-2023**

श्री मिहिर रायका अं पर आयुक्त (अपील) द्वारा पारित

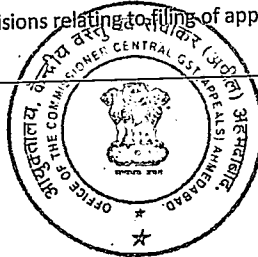
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZT2412210282870 DT. 23.12.2021** issued by
 The Assistant Commissioner, CGST, Division-VII, Ahmedabad South

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

Appellant	Respondent
The Assistant Commissioner, CGST, Division-VII; Ahmedabad South	M/s. Poure Inox Pvt Ltd. Jindal Corporate House , Opp. D-Mart, I.O.C. Petrol Pump lane, Shivranjani, Shyamal, 132Ft Ring 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) 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 .



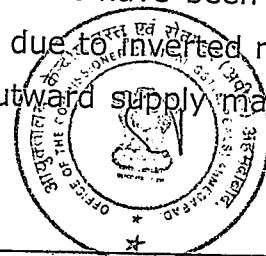
ORDER IN APPEAL**Brief Facts of the Case :**

The Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the '*Appellant/Department*') in terms of Review Order No. 08/2022-23 dated 11.05.2022 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 against Order No. ZT2412210282870 dated 23.12.2021 (hereinafter referred to as the '*Impugned Order*') passed in Form-GST-RFD-06 by the Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the '*Adjudicating Authority*') sanctioning refund to **M/s. Poure Inox Private Limited**, D-1/404, Pushkar-4, P.T. College Road, Opp. Vitrag Society, Paldi, Ahmedabad - 380 007 (hereinafter referred to as the '*Respondent*').

2. Briefly stated the facts of the case is that the *Respondent* registered under GSTN No.24AALCP7171M1ZV had filed a refund claim of Rs.55,77,880/- for refund of ITC accumulated due to Inverted Tax Structure vide ARN No. AA241221050627I dated 17.12.2021 for the period of November 2021 under Section 54 (3) of the CGST Act, 2017. After verification of the refund claim the *adjudicating authority* found the claim in order and accordingly sanctioned the said refund claim to the *Respondent* vide *impugned order*.

During Review of the '*Impugned Order*' dated 23.12.2021 the department has observed as under :

- During review of refund claim it was observed that excess amount of refund has been sanctioned to the *respondent* in accordance with Rule 89 (5) of CGST Rules, 2017 read with Section 54 (3) of CGST Act, 2017. It was observed by the department that the *Respondent* has received inward supply at the rate of 5%, 12% and 18% during the relevant period and the claimant has made outward supplies at the rate of 0.1%, 5%, 12% and 18% during the relevant period.
- From the Refund Application it was observed by the *department* that the claimant has taken value of Rs.1,34,18,314/- (which is the value of total supplies made by them) for the purpose arriving at the "*Turnover of inverted rated supply of goods and services*", and "*tax payable on such inverted rated supply of goods and services*", however, the value of outward supplies made by them @18% amounting to Rs.8,72,500/- should not have been taken while calculating the refund under ITC accumulated due to inverted rate of tax. Thus, the claimant has erred by adding the outward supply made by

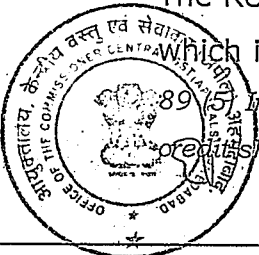


them @18% in the "Turnover of inverted rated supply of goods and services" and "tax payable on such inverted rated supply of goods and services". The Department is of the view that Inverted Duty Structure means when the rate of tax on inputs purchased is more than the rate of tax on outward supplies.

- Further, the department has referred the para 54 of the Circular No. 125/44/2019-GST dated 18.11.2019 vide which it was clarified as under :
 - o "Refund of unutilized ITC in case of inverted tax structure, as provided in Section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax."
- Thus, it is clearly explained in the Circular supra, that the Net ITC covers the ITC availed on all inputs in the relevant period; in the instant case, it covers ITC availed on inputs purchased @ 5%, 12% and 18% ; Correspondingly, the "Turnover of inverted rated supply of goods and services" and "tax payable on such inverted rated supply of goods and services" should also cover all the outwards supplies made by the claimant @ 5% and 12% (except outward supplies made at the rate equal to the highest rate of inward supply i.e. @18% only) to arrive at the turnover of the inverted rated supply of goods and services.
- Therefore, all the outward supplies made by the claimant (except outward supplies made @ 18% only in the instant case) i.e. outward supplies made @ 0.1%, 5% and 12% only are required to be added to arrive at the "Turnover of inverted rates supply of goods and services" and "tax payable on such inverted rated supply of goods and services". Therefore, total outward supply (excluding zero rated supply) as per GSTR 3B return for the month of November 2021 of the claimant amounting to Rs.1,34,18,314/- (which is inclusive of outward supplies made at the rate of 5%, 12% and 18%) minus outward supplies made by the claimant @18% (Rs.8,72,500/-) which comes to Rs.1,25,45,814/- should have been taken as the "Turnover of inverted rated supply of goods and services" and "tax payable on such inverted rated supply of goods and services" for calculation of the refund for the captioned period.

The Refund claims were granted as per Rule 89(5) of the CGST Rules, 2017 which is read as under :

89(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-



Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) * Net ITC / Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation: - For the purposes of this sub-rule, the expressions -

(a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) ["Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).]

- Further, claimant has taken ITC of services amounting to Rs.2,78,195/- in the Net ITC. As per Rule 89(5) as well as in light of para 53 of Circular No. 125/44/2019-GST dated 18.11.2019 input means any goods other than capital goods used or intended to be used by a supplier in the course of furtherance of business. Thus, inputs do not include services or capital goods. Thus, the actual Net ITC should have been taken Rs.56,20,031/- (Rs.58,98,226/- minus Rs.2,78,195/-).
- Thus, by taking correct value of "Turnover of inverted rated supply of goods and services" and "tax payable on such inverted rated supply of goods and services" and also Net ITC as narrated above, the amount of refund which is available to the claimant as per Rule 89(5) of the CGST Rule, 2017 has been calculated for the month of November 2021 by the department as under :

(Amount in Rs.)

Turnover of inverted rated supply of goods (1)	Tax Payable on such inverted rated supply of goods (2)	Adjusted Total Turnover (3)	Net ITC (4)	Max. Refund Amt. to be claimed = (1*4/3)-2]	Amount sanctioned	Amount to be recovered
1,25,45,814/-	1,63,296/-	1,34,18,314/-	56,20,031/-	50,91,303/-	55,77,880/-	4,86,577/-

- In view of above, the department has considered that excess amount of refund has been sanctioned to the claimant. Accordingly, the department is of the view that the said excess amount of erroneous refund of Rs.4,86,577/- is required to be recover along with interest and penalty as they have misled the department by taking higher 'Inverted rated turnover' and 'Net ITC'.

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

- The adjudicating authority has erred in calculating the refund amount by taking wrong value of "Turnover of inverted rated supply of goods and services" and "tax payable on such inverted rated supply of goods and services" and also "Net ITC" as narrated in above paras.
- Thus, by taking correct value of "Turnover of inverted rated supply of goods and services", and "tax payable on such inverted rated supply of goods and services",



services” and also “*Net ITC*” and arriving at the refund available to the *Respondent*, it appears that the *adjudicating authority* has erroneously sanctioned excess amount of refund of Rs.4,86,577/-.

- Therefore, it is required to recover said amount of erroneous refund of Rs.4,86,577/- along with interest and penalty from the *Respondent* as narrated in above paragraphs; as they have mis-stated by taking wrong value of “*Turnover of inverted rated supply of goods and services*” and “*Net ITC*”.

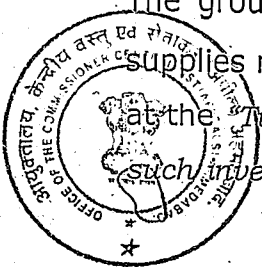
In view of above, the *appellant/department* has made prayer for set aside the *impugned order* wherein the *adjudicating authority* has erroneously sanctioned excess refund of Rs.4,86,577/- under Section 54 (3) of CGST Act, 2017; to pass an order directing the original authority to demand and recover the amount erroneously refunded to the *Respondent* with interest and penalty; to pass any other orders as deem fit in the interest of justice.

Submissions of the Respondent :

4. The Personal Hearings in the matter were scheduled on 22.12.2022, 12.01.2023 and on 31.01.2023, however no-one from *Respondent* appeared for the personal hearings. In response to said Personal Hearing letters, the *Respondent* vide letter dated 30.01.2023 informed that they had over claimed GST Refund of Rs.4,86,577/- and for same they had received Notice on 31.08.2022 regarding over claimed GST Refund for November 2021 ; that accordingly, they have paid the GST Tax Challan Rs.5,52,177/- (Tax: Rs.486577/- Plus interest: Rs.65,600/-) as on 21.09.2022. Further, the *Respondent* vide said letter has submitted the copy of DRC-03 and Challan, according to which they have paid the due amount of Rs.4,86,577/- with interest of Rs.65,600/- by DRC 03 bearing ARN No. AD241022001002E dated 02.10.2022 by making debit entry No. DC2410220002860 dated 02.10.2022 of Cash Ledger.

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 was 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 and penalty. The grounds in appeal is that the *respondent* has taken value of the outward supplies made by them @ 0.1%, 5%, 12% and 18% only for the purpose arriving at the “*Turnover of inverted rated supply of goods and services*” and “*tax payable on such inverted rated supply of goods and services*”, whereas the value of supplies



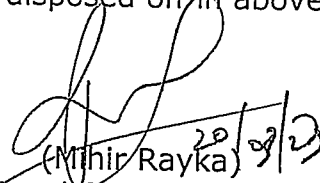
made by them @ 18% should not have been considered for the purpose arriving at the "Turnover of inverted rated supply of goods and services" and "tax payable on such inverted rated supply of goods and services" while calculating the refund under ITC accumulated due to inverted rate of tax. In this regard, I find that the department/appellant has referred para 54 of the Circular No. 125/44/2019-GST dated 18.11.2019. Further, I find that the Respondent has considered Input Tax Credit of services amounting to Rs.2,78,195/- in the Net ITC considered for the purpose of calculation of admissible refund. However, in view of Rule 89(5) of the CGST Rules, 2017 and as per para 53 of the Circular No. 125/44/2019-GST dated 18.11.2019, the ITC of services & capital goods should not be considered in Net ITC in the matter of refund of accumulated ITC due to Inverted Tax Structure. Accordingly, by considering the correct value of outward supplies made by the Respondent i.e. @ 0.1%, 5% & 12% and correct value of Net ITC (without considering ITC of Services & Capital Goods) for calculation of the refund for the captioned period the admissible refund comes to less than the sanctioned amount, which resulting in excess sanction of refund or Rs.4,86,577/- to the Respondent.

6. Further, I find that the Respondent vide letter dated 30.01.2023 has informed that they have already paid back the refund amount to the Department with interest. The Respondent has produced the copy of DRC-03 according to which the Respondent has paid the amount by debiting Cash Ledger vide Debit Entry No. DC2410220002860 dated 02.10.2022 for Rs.4,86,577/- towards Tax and Rs.65,600/- towards Interest. Therefore, I find that the Respondent has accepted the view of the Department.

7. 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'.

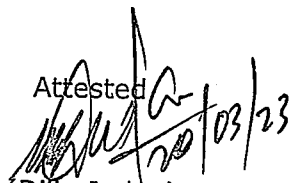
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

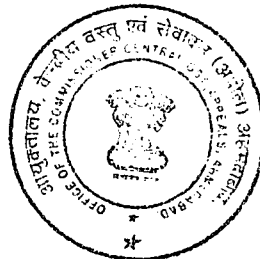
The Appeal filed by 'Department' stand disposed off in above terms.


(Mihir Rayka) 20/3/23

Additional Commissioner (Appeals)

Date: 20.03.2023

Attested

(Dilip Jadav)
20/03/23
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

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

Appellant

M/s. Poire Inox Private Limited,
D-1/404, Pushkar-4, P.T. College Road,
Opp. Vitrag Society, Paldi, Ahmedabad - 380 007

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

