



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

07926305065-

टेलिफैक्स 07926305136



DIN-20220664SW000000F3DA

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/63/2021-APPEAL /1800-1805
ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-46/2022-23**
दिनांक Date : **14-06-2022** जारी करने की तारीख Date of Issue : **14-06-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZZ2412200250224 DT. 23.12.2020**
issued by Assistant Commissioner, Division IV, Ahmedabad South

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

The Joint Commissioner (in situ), CGST, Division IV, Ahmedabad South

(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 Joint Commissioner (in situ), CGST, Division IV, Ahmedabad South (hereinafter referred to as the appellant) has filed the present appeal on dated 17-6-2021 against Order No.ZZ2412200250224 dated 23-12-2020 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, CGST, Division IV, Ahmedabad South (hereinafter referred to as the adjudicating authority) sanctioning refund of Rs.19,50,808/- to M/s.Sinhal Brothers, 238, Opp Cozi Restaurant, Ranipur, Narol, Ahmedabad 382 405 (hererinafter referred to as the respondent)

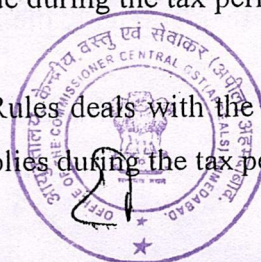
2. Briefly stated the fact of the case is that the respondent registered under GSTIN 24AAMFS8786M1Z6 has filed refund application on dated 9-12-2020 for refund of Rs.19,50,808/- on account of ITC accumulated due to inverted tax structure for the month of September 2020. The respondent has claimed refund taking into account the turnover of inverted rated supply of goods at Rs.2,05,01,053/- ; adjusted total turnover at Rs.2,05,34,051/-, tax payable on such inverted rated supply of goods at Rs.10,25,053/- and Net ITC at Rs.29,80,651/-. The adjudicating authority vide impugned order sanctioned refund of Rs.19,50,808/-. During review, it was observed that the impugned order passed by the adjudicating authority is not proper and leger on the following ground.

3. During review of refund application and computation of refund claimed as per Statement 1A along with reconciliation with GSTR3B, GSTR2A and Annexure B it was noticed that as per GSTR3B the total adjusted turnover for the said period was Rs.3,02,36,235/- and the respondent has taken total adjusted turnover of Rs.2,05,34,051/- which is less of Rs.97,02,184/- in the calculation of refund. Accordingly, the eligible refund amount comes to Rs.9,95,915/- instead of Rs.19,50,808/- resulting in excess sanction of refund of Rs.9,54,893/-. Therefore, it appeared that the adjudicating authority has erred in sanctioning excess refund of Rs.9,54,893/- to the respondent.

4. In view of above, the appellant filed the present appeal to set aside the impugned order sanctioning excess refund of Rs.9,54,893/- and to pass order directing the original authority to recover and appropriate the amount erroneously refunded to the respondent with applicable interest.

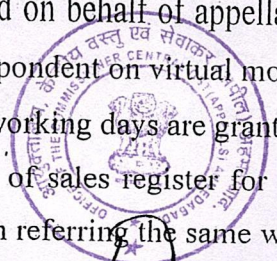
5. The respondent vide letter dated 23-5-2022 submitted written submission as under:

- i. There is no denial of the fact that the total turnover as per GSTR3B for the month of September 2020 was Rs.3,02,36,235/- and in the same line the total turnover mentioned in GSTR3B for the month of August 2020 was Rs.3,28,40,269/-.
- ii. On combined reading of definition of 'turnover in State' as provided under Section 2 (112) and explanation of adjusted total turnover a conclusion can be drawn that adjusted total turnover means that total value of all taxable supply made during the tax period by the tax payer.
- iii. Section 37 of CGST Act read with Rule 59 of CGST Rules deals with the return that is required to be filed having the details of all outward supplies during the tax period in Form



- GSTR1. Further tax period has also been defined in Section 2 (106) which state that 'tax period means the period for which the return is required to be furnished.
- iv. It is crystal clear that the adjusted total turnover means the total value of outward supplies reflected in GSTR1 for the relevant period. Therefore, the value of adjusted total turnover to be mentioned and used in the formula for the refund application for inverted duty structure shall be value of outward supply as mentioned in GSTR1.
 - v. As per Section 39 of CGST Act read with Rule 61 of CGST Rules, GSTR3B is the return containing the details of inward and outward supplies of goods or services or both.
 - vi. At the time of filing of GSTR1 for the month of August 2020 all the sales figures for the month of August 2020 were properly uploaded on the GST portal, however at the time of filing of GSTR3B for the said month few sales were inadvertently skipped in the calculation of total turnover resulting in difference between the output liability as per GSTR 1 and GSTR3B for the month of August 2020.
 - vii. This omission of output liability in GSTR3B for August 2020 was duly rectified at the time of filing of GSTR3B for the month of September 2020. This has again resulted in inverse difference between output liability as per GSTR1 and GSTR3B for the month of September 2020. This is also evident by referring to the comparison chart as available in GSTIN portal showing the month wise liability as declared in GSTR1 and GSTR3B.
 - viii. Further electronic credit ledger for the month of August 2020 and September 2020 also depict the same figures of output liability as compared with the comparison chart available on the GSTIN portal.
 - ix. The rectification in GSTR3B was done in the light of sub section 9 of Section 39 of CGST Act.
 - x. Since GSTR3B for the month of Setpmerb 2020 contains few sales figures for the month of August 2020 the same cannot be treated as adjudsted total turnover for the purpose of claiming refund as per Rule 89 of CGST Rules.
 - xi. This will result in vague calculation of GST refund defeating the purpose of the provision and ignoring the provision of CGST Act and CGST Rules.
 - xii. Since the adjusted total turnover is wrongly considered and placing the same in the formula as provided in Rule 89, the refund also wrongly calculated. Upon placing the adjusted total turnover as discussed herein above in the formula as provided in Rule there is no excess sanction of refund.
 - xiii. In view of above there is no error made by the adjudicating authority in sanctioning the refund amount as per refund application and accordingly the respondent requested to set aside the appeal filed by the Department and upheld the order passed by the adjudicating authority.

6. Personal hearing was held on dated 25-5-2022. No one appeared on behalf of appellant. Shri Kunal Agrawal, authorized representative appeared on behalf of respondent on virtual mode. He stated that he wants to make additional submissions for which three working days are granted. Accordingly, the appellant vide letter dated 25-5-2022, furnished copy of sales register for the month of August 2020 and September 2020 and further submitted that on referring the same with



GSTR3B and GSTR1 for the relevant period, it can be find that the for the month of August 2020 they had actual sales of Rs.4,25,42,453/- as per sales register and GSTR1. However, total turnover as per GSTR3B was Rs.3,28,40,269/-. The difference of Rs.97,02,183/- was duly taken care at the time of filing of GSTR3B for the month of September 2020. For the month of September 2020, the total sales as per sales register was Rs.2,05,34,051/- which was correctly declared in GSTR1 for the month of September 2020. However total sales as per GSTR3 B for the month of September 2020 was Rs.3,02,36,234/- resulting in difference of Rs.97,02,183/-. This difference was on account of mismatch of sale as per sales register and GSTR3B for the month of August 2020. That they had claimed refund for the month of September 2020 based on total turnover as per sales register and GSTR1 for the month of September 2020 and not as per GSTR3B for the month of September 2020 since the GSTR3B for September 2020 contains the rectification effect of omission of sales for the month of August 2020.

7. I have carefully gone through the facts of the case, grounds of appeal, submission made by the respondent and documents available on record. In this case dispute is with regard to adjusted turnover value taken in the formula prescribed under Rule 89 (5) of CGST Rules, 2017 for arriving the admissible refund. The respondent has taken adjusted total over value of Rs.2,05,34,051/- based on sales register and GSTR1 returns whereas the appellant has taken adjusted total turnover value of Rs.3,02,36,235/- based on GSTR3B returns. As per grounds of appeal, this has resulted in sanction of excess refund of Rs.9,54,893/- to the respondent and hence liable for recovery with interest from the respondent.

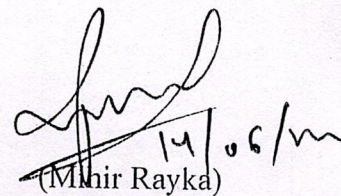
8. I find that as per GSTR3B return for the month of September 2020, the total taxable value was Rs.3,02,36,235/-. However in GSTR 1 return for the month of September 2020 the total taxable value of outward supply was Rs.2,05,34,050/- only having a difference of Rs.97,02,185/-. As per respondent's submission this difference was due less value shown in GSTR3B for the month of August 2020 than the value shown in GSTR1 for the month of August 2020. I have scrutinized both the returns for the month of August 2020 and find that as per GSTR3B return for the month of August 2020 the total taxable value was Rs.3,28,40,269/- whereas as per GSTR 1 return the net taxable value was Rs.4,25,42,453/- having a difference of Rs.97,02,184/-. I have also gone through copy of sales register for the month of August and September submitted by the respondent and find that net value of outward supply of goods was Rs.4,25,42,453/- and Rs.2,05,34,050/- respectively which is tallied with value shown in GSTR1 return. Therefore, I find force in the submission of the respondent that due to less value reported in GSTR3B return for the month of August 2020, the differential value was adjusted in the month of September 2020 which I find is permissible under Section 39 (9) of CGST Act, 2017.

9. I further find that as per clause (E) of Rule 89 (5) of CGST Rules, 2017, the adjusted total turnover is defined to mean 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) and excluding the value of exempt supplies other than zero-rated supplies and 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. Relevant period is defined to mean period for which the claim has been filed. Therefore, in respect of claim made for a particular month/period, the value of taxable supply made under clause (a) and (b) during such month/period only need to be taken towards adjusted total turnover in the formula. Accordingly, in this case since the claim was made for month of September 2020, the value of outward taxable supply of goods made during September 2020 only need to be taken towards adjusted total turnover. I further find that adjusted total turnover of Rs.3,02,36,235/- taken in appeal is based on value declared in GSTR3B return for the month of September 2020 and not supported with any supporting documents or evidence. However, as per documents/records viz GSTR 3B, GSTR1 and Sales records made available to me, I find that the actual value of outward taxable supply made during September 2020 was Rs.2,05,34,050/- and by including and adjusting the differential value of outward supply of Rs.97,02,183/- which is left out in the GSTR3B return for the month of August 2020, the value of outward supply was shown as Rs.3,02,36,235/- in GSTR3B return for September 2020. Therefore, I find that merely because value of outward supply is shown as Rs.3,02,36,235/- in GSTR3B returns, it is factually wrong and incorrect to consider this value towards adjusted total turnover for the month of September 2020 since it include value of outward supply made in August 2020 also. Hence in this case, the actual value of outward supply of goods of Rs.2,05,34,050/- made in September 2020 only need to be taken towards adjusted total turnover. Accordingly, I do not find any infirmity in the impugned order passed by the adjudicating authority sanctioning refund of Rs.19,50,808/- taking into account adjusted total turnover of Rs.2,05,34,051/-. Consequently, I also find that there is no excess sanction of refund warranting recovery of the same as prayed by the appellant. Therefore, I upheld the impugned order and reject the appeal filed by the appellant.

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

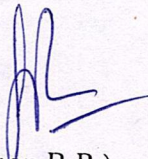
10. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested



(Sankara Raman B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad
By RPAD

To,

The Joint Commissioner (in situ)
CGST, Division IV (Narol), Ahmedabad South



Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 5) M/s. Sinhal Brothers, 238, Opp Cozi Restaurant, Ranipur, Narol, Ahmedabad-382405
- ✓ 6) Guard File
- ✓ 7) PA file

