



आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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फाइल संख्या : File No : GAPPL/ADC/GSTD/119/2021 -APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-68/2022-23**

दिनांक Date : **29-06-2022** जारी करने की तारीख Date of Issue : **29-06-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

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Arising out of Order-in-Original No. **ZV2403210266304 DT. 04.04.2021**

issued by Deputy Commissioner, CGST, Division VIII, Ahmedabad South

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

The Assistant Commissioner, CGST, Division VIII, 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 Assistant Commissioner, CGST, Division VIII, Ahmedabad South (hereinafter referred to as the appellant) has filed the present appeal on dated 29-9-2021 against Order NO.ZV2403210266304 dated 4-4-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, CGST, Division VIII, Ahmedabad South (hereinafter referred to as the adjudicating authority) sanctioning excess refund of Rs.4,36,123/- to M/s.Jivita Healthcare Private Limited, 312, Nilkanth Palace, 100 Road, Satellite, Jodhpur, Ahmedabad 380 015 (hereinafter referred to as the respondent.)

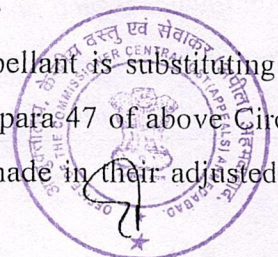
2/ Briefly stated the fact of the case is that the respondent registered under GSTIN 24AAECJ0816A1ZB has fled refund claim for Rs.2,61,53,625/- for refund of ITC accumulated due to export made without payment of duty on dated 9-3-2021. After due verification, the adjudicating authority vide impugned order sanctioned refund to the respondent. During review of said claim it was observed that the turnover of zero rated supply has been taken as Rs.33,75,14,207/- which is the invoice value of goods exported, whereas as per shipping bill FOB value, the turnover of zero rated supply was Rs.33,18,86,012/-. 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 the GST invoice and 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 exported which is FOB value as per shipping bill and applying the formula for refund of export without payment of duty, the admissible refund comes to Rs.2,57,17,502/- instead of Rs.2,61,53,625/-. Thus, there is excess sanction of refund of Rs.4,36,123/- to the respondent which is required to be recovered along with interest. In view of above the appellant filed the present appeal on the following grounds:

- i. The adjudicating authority has considered higher value of turnover of zero rated supply ie Rs.33,75,14,2017/- which is the invoice value of the goods exported instead of lower value of goods exported ie. Rs.33,18,86,012/- which is the FOB value as per Para 47 of Circular No.125/44/2019-GST dated 18-11-2019.
- ii. On applying formula for refund on the lower value ie FOB value, the refund admissible comes to Rs.2,57,17,502/- instead of Rs.2,61,53,625/- which was sanctioned by the sanctioning authority and thus there is excess sanction of refund of Rs.4,36,123/- which is required to recovered along with interest.
- iii. The adjudicating authority has 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 above Circular which has resulted in excess payment of refund of Rs.4,36,123/- to the respondent.
- iv. In view of above the appellant prayed to set aside the impugned order and to pass order directing the original authority to recover and appropriate erroneously refunded of Rs.4,36,123/- with interest.

3. The respondent filed written submission on dated 14-6-2022 as under:



- i. That there is no difference in value of goods in export as alleged by the appellant. It can be seen that the value of export of goods in foreign currency is exactly matching with shipping bills vis a vis details of export filed along with GST refund application. It is matching with shipping bill and their invoice.
- ii. Regarding difference in value of goods being exported as worked out by the appellant in the present case is in INR only. The difference of value is arising only because of the adoption of different US-INR rates. The Customs authorities are taking the USD-INR rate as per their own pre declared rate which is normally declared for the period of a fortnight, while they are taking the USD-INR rate based on RBI rate prevailing on the date of shipping bill.
- iii. On reading para 47 of CBIC Circular NO.125/44/2019-GST dated 18-9-2019 it is clear that it is applicable in the case when there is difference in value of goods. The vires of adoption of lower of the value of goods as stated in the above para 47 is applicable only in the case when there is difference in value of goods between the value of the goods declared in GST invoice and value of corresponding shipping bill/bill of export.
- iv. In their case there is no difference in value of goods as declared in GST invoice and corresponding shipping bill. This value of goods in foreign currency or say value of goods in USD in the present case is exactly matched. The so called difference as alleged by the appellant is only because of adoption of difference USDINR rates. As such there is no difference in value of goods in USD basis. From the consolidated reading of para 47, it is amply clear that there is no any difference in value of goods so as to attract the para 47 of above Circular.
- v. The Company is in 100% export business which can be verified from GSTR1 and GSTR3B returns and no domestic supply. If reducing the turnover of zero rated supply of goods wrongly applying the rationale given in Para 47 of above Circular, then consequently their total adjusted total turnover will also be reduced and thereby ultimately there will be no any reduction in refund as alleged by the appellant.
- vi. The appellant has wrongly applied the rationale of Para 47 of above Circular has reduced the export turnover by Rs.56,28,195/- at Sr.No.2 of the Table while at the same time the appellant do not reduce their adjusted total turnover at Sr.No.4 of Table. If their export turnover is reduced, then there must be corresponding reduction in adjusted total turnover. This is must in the given facts of the case, wherein total sales was on account of export sales only. If refund in export sales is adopted at the both the figures, then again there will not be any difference in amount of refund as claimed and sanctioned to them.
- vii. As per definition of turnover of zero rated supply of goods and adjusted total turnover given under Rule 89 (4) of CGST Rules, 2017, while calculating the adjusted total turnover, the amount of turnover of zero rated supply of goods has to be added and as per the above definition given in under Rule 89 (4), this zero rated supply of goods means the turnover of the zero rated supply as adopted as per above definition only.
- viii. Thus, considering the factual and legal position also, if the appellant is substituting their turnover of zero rated supply by applying the rationale given in para 47 of above Circular, then corresponding and equal amount of adjustment has to be made in their adjusted total



turnover also. This is mandated as per above definition of various turnover given under Rule 89 (4).

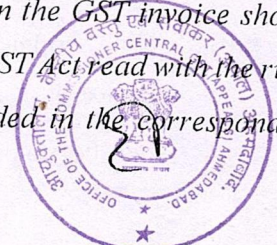
- ix. It is very arbitrary if on one hand the zero rated supply value of goods was reduced by applying para 47 of above Circular and on the other hand not giving effect the said difference in their adjusted total turnover. If there is reduction in value of zero rated supply or say export then it should be given at both the turnover of the formula given in Rule 89 (4).
- x. In view of above submissions, the respondent submitted that refund amount sanctioned and issued to them is just and proper and no amount is excessively claimed or refunded to them and hence there is no question of recovery of the same.

4. Personal hearing was fixed on dated 3-6-2022 and 14-6-2022. No one appeared either on behalf of the appellant or on behalf of the respondent. Another personal hearing was fixed on dated 21-6-2022, in which Shri Shakir V Chauhan, authorized representative appeared on behalf of the respondent on virtual mode. He stated that he wants to submit additional information for which three working days are granted. Accordingly, the respondent filed additional submission as under:

That the appellant has not given any working of the alleged difference in turnover of zero rated supply (invoice value) and turnover of zero rated supply (FOB value) as given at Para 1.4 of the statement of facts and only the amount is given in appeal memo. As per above para there is a difference of turnover of Rs.56,28,195/-. They requested to provide all the bill wise table of working of above difference so as to provide further submission if required. That they sought the above details in any case difference as alleged in appeal memo is on a higher side. The respondent also submitted detailed statement of their zero rated sales in both foreign currency and INR.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that the present appeal was filed to set aside the impugned order wherein the adjudicating authority has sanctioned excess refund of Rs.4,36,123/- 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 of Rs.33,75,14,207/- as turnover of zero rated supply of goods and arrived admissible refund at Rs.2,61,53,625/-, whereas the turnover of zero rated supply of goods should be FOB value as per shipping bill at Rs.33,18,86,10-2/- 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 is comes to Rs.2,57,17,502/- resulting in excess sanction of refund of Rs.4,36,123/-. For better appreciation of facts I reproduce Para 47 of Circular No.18-11-2019 as under :

47. It has also been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero-rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are meant for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding



shipping bill / bill of export. During the processing of the 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.

7. The aforesaid Circular 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 ie 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. However, I find that in the Circular itself it was also mentioned that in normal cases the transaction value (invoice value) should also be recorded in shipping bills but only in case of any difference in value declared in shipping bill with invoice value, the lower value should be taken for calculating the eligible amount of refund. I have gone through the copy of shipping bills, invoice and the detailed worksheet showing turnover of zero rated supply of goods arrived by the respondent submitted in appeal. I find that the value of goods declared in invoice in USD terms include FOB value, Freight and Insurance and corresponding shipping bills also show FOB value, freight and insurance. The above three components of value are same in both the invoices and shipping bills. However, there is difference in exchange rate adopted by the respondent for arriving the turnover of zero rated supply of goods and exchange rate adopted in shipping bill. Therefore, I find that the difference in net turnover of zero rated supply of goods is on account of difference in exchange rate adopted for arriving the value in INR and not on account of difference in value in invoice and shipping bills. I find that the Circular envisage the situation where there is difference in value shown in shipping bills and transaction value ie invoice value. Further the Circular also envisage to adopt the shipping bill value, if found lower, and not FOB value as per shipping bill. Since there is no difference in value of goods among invoice and corresponding shipping bills, prima facie I find that the situation as envisaged in the above Circular is not prevalent in this case so as to take lesser value as per shipping bill towards turnover of zero rated supply of goods. Therefore, I find force in the contention of the respondent that there is no difference in sales value and FOB value as per shipping bill in USD but the difference in INR is only due to USD-INR rates (exchange rate).

8. The respondent further contended that they are making 100% export supplies and hence even if turnover of zero rated supply of goods is reduced in terms of above Circular, proportionate reduction should also be made in total adjusted total turnover and ultimately there will not be any reduction in admissible refund amount. I find force in above submission also. I have scrutinized the copy of GSTR3B and GSTR1 return filed by the respondent and find that during the claim period, the appellant has made zero rated outward taxable supplies for Rs.34,02,25,990/- (including Non GST outward supply for Rs.27,11,783/-) and not made any non-zero rated outward supplies. In the grounds of appeal also the appellant has taken this value towards adjusted total turnover. As per Rule 89 (4), the formula for arriving admissible refund is *Turnover of zero rated supply of goods/services X Net ITC / adjusted total turnover*.

The 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.

"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"

9. Thus, the adjusted total turnover, defined in clause (E) of sub-rule (4) of Rule 89, 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 case the value of zero rated turnover was taken as FOB value as per shipping bill. However, the adjusted turnover is taken as per GSTR3B returns, which imply that in the adjusted total turnover, the invoice value is taken as value of zero rated supply of goods. Apparently, this result in adopting two different values for same zero rated supply of goods, which I find is not a rational and logical view. A close reading of para 47 of Circular No.125/44/2019-GST dated 18-11-2019 further reveals that lower value among invoice and shipping bill is to be taken for calculating eligible amount of refund and not for arriving zero rated turnover at numerator in the formula. Therefore, I am of the considered view that the same value of zero rated supply of goods taken in turnover of zero rated supply of goods need to be taken in adjusted total turnover also for arriving admissible refund. Consequently, if the shipping value, (FOB value) is taken as turnover of zero rated supply of goods, the same value should be taken in adjusted total turnover towards value of zero rated supply of goods and admissible refund should be determined accordingly.

10. I also refer to 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:

4.5 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

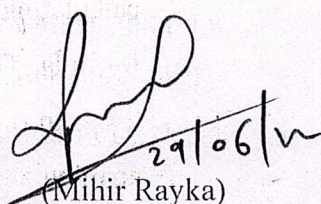
consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule 89. Thus, the restriction of 150% of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", 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.

11. 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. 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 total adjusted total turnover at denominator will be same. In the subject case there is no dispute with regard to Net ITC amount and the entire supply was made for zero rated supply. Accordingly in this case even by taking the shipping bill value as turnover of zero rated supply of goods, there will not be any impact on admissible refund inasmuch as the same value will also figure in adjusted total turnover also.

12. In view of facts of the case, I do not find any merit and legality in the present appeal filed by the appellant to set aside the impugned order sanctioning excess refund of Rs.4,36,123/- taking into account shipping bill value (FOB value) as turnover of zero rated supply of goods and adjusted total turnover as per value shown in GSTR3B/GSTR1 returns. Hence, I do not find any infirmity in the impugned order sanctioning refund of Rs.2,61,53,625/- to the respondent. Accordingly, 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।

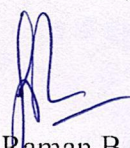
13. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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

To,

The Assistant Commissioner,
CGST, Division VIII,
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. Jivita Healthcare Private Limited, 312, Nilkanth Palace, 100 Road, Satellite, Jodhpur, Ahmedabad-380015
- ✓ 6) Guard File
- 7) PA file

