



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, अम्बावाडी 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/GSTP/841/2022 -APPEAL / 3138 - 43

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-86/2022-23**
दिनांक Date : **24-08-2022** जारी करने की तारीख Date of Issue : **24-08-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZR2410210274567 DT. 22.10.2021** issued by Assistant Commissioner, Division VIII, Vejalpur, Ahmedabad South

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

**M/s. Maxim Exports, 708, Mauryansh Elanza, Nr. Parekhs Hospital,
Shyamal Cross road, Satellite, Ahmedabad-380015**

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| (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

Shri Malti Tarunkumar Shah of M/s.Maxim Exports, 708, Mauryansh Elanza Near Parekhs Hospital, Shyamal Cross Road, Satellite, Ahmedabad 380 015 (hereinafter referred to as the appellant) has filed the present appeal online on dated 7-1-2022 against Order No.ZR2410210274567 DATED 22-10-2021 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, CGST Division VIII (Vejalpur), Ahmedabad South (hereinafter referred to as the adjudicating authority).

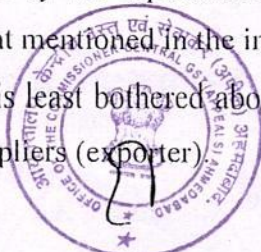
2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AKQPS8709Q1Z1 has filed refund claim for refund of Rs.29,19,456/- on account of ITC accumulated due to export of goods/services under Section 54 (3) of CGST Act, 2017. The appellant was issued show cause notice reference No.ZP2410210071590 dated 6-10-2021 for rejection of claim on the following grounds:

As per para 47 of Circular NO.125/44/2019-GST dated 18-9-2019 it was clarified that On verification of refund claim it has been observed that the appellant has taken zero rated value as the value of Invoice value of Rs.8,58,13,912/- instead of lower of the two values between shipping bill value as per Icgate site which comes to Rs.6,99,15,035/- and accordingly the maximum admissible refund comes to Rs.23,78,564/- and hence the appellant has claimed excess refund of Rs.5,40,892/-.

3. The appellant has filed reply to show cause notice in Form RFD 09 reference No.ZP2410210071590 dated 21-10-2021. The adjudicating authority vide impugned order held that refund amounting to Rs.5,40,892/- is inadmissible and sanctioned refund of Rs.23,78,564/- on the grounds mentioned in show cause notice.

4. Being aggrieved with rejection of claim amount of Rs.5,40,892/- the appellant filed the present appeal on the following grounds:

- i. Export sales are done in the international market as per INCOTERMS which lays down internationally accepted forms of transaction. Significant terms that govern this arena are FOB, Cost and Freight (C&F) and Cost, Insurance and Freight (CIF) etc. Free on Board (FOB) means the value of goods at the time of Board and C&F means Cost and Freight ie value of goods at the time of delivery to recipient port, which include cost and transportation. As per the agreements entered with the customers different exporters adopt different transactions and raise invoices for agreed transaction. In the case of C&F contracts, freight export are borne by the exporters and an invoice is raised. In turn the recipient of goods pays the amount mentioned in the invoice raised by the exporter. As far as the recipient is concerned, he is least bothered about the cost, freight, instead he pays the entire consideration to his suppliers (exporter)



- ii. The value of goods and services were determined under Section 15 of CGST Act, 2017 which is even made applicable to IGST Act vide Section 20 of IGST Act 2017 deals with valuation.
- iii. As per Section 15 of CGST Act, 2017, it is evident that the value of supply of goods or services is the transaction value, which is defined under the statute itself. It is clear from the above that in case of export of goods under C&F contracts the actual price paid by the recipient to the suppliers (exporter) for the said supply is the transaction value, which is nothing other than the value of the supply. As far as C&F contracts are concerned, the recipient pays the price mentioned in the invoice including sea, freight charges to his exporter for the supply of goods. Since Section 7 of IGST Act, 2017 treats exports and importers as inter-state supplies, the value should be strictly made as per the provisions of GST.
- iv. Traders are confused as to under which Law the value of export of goods has been done viz. whether under GST or under Customs Act. In this background Circular No.37/11/2018-GST dated 15-3-2018 and Circular No.125/44/2019-GST dated 18-11-2019 was issued by the CBIC which clarified that valuation has to be made strictly following the provisions under GST Law. The aforementioned Circular reiterated that the export of goods or services, ie zero rated supplies are to be effected under GST Laws and thereby the value of supply shall be the invoice value (transaction value). In the instant Circular here it nowhere addressed to consider FOB value for the purpose of refund of unutilized ITC.
- v. The value mentioned in the shipping bill is derived from export invoice only. The values shall always match what is mentioned in the shipping bill and export invoice therefore the aggregated turnover shall be value reported in the shipping bill and export invoice.
- vi. In the shipping bills two values have to be declared by the exporter ie FOB value and invoice value. The exporter needs to declare the value of goods at the time of export in FOB column and the actual transaction value (the amount that is actually going to be received from his customer) in invoice value column
- vii. In some instances, exporter raised invoices in advance and export the goods at a later period. In such cases the value declared in the invoices and in shipping bill may vary due to change in exchange rates. For the purpose of refund lower of the value ie value mentioned in the GST invoice and invoice value mentioned in the shipping bill shall be taken into account. In any case FOB value shall not be taken as the value of supply in respect of CIF contracts. They are engaged in FOB transactions as well as CIF transactions.
- viii. The adjudicating authority has considered the zero rated value as referred at the ICEGATE website for ascertaining the refund claim. There is no provision under GST Law for referring value appearing in the website for purpose of assessment of refund claim. The verification of ICEGATE website for the purpose of ascertaining authenticity of shipping bill pertaining to refund not considering the zero rated value for assessment of refund.
- ix. The refund of unutilized ITC in respect of zero rated supplies of goods has categorically explained that value under GST invoice should normally be the transaction value under Section 15 of CGST Act, 2017. That lower value of the two value is to be ascertained in case of difference in export value declared in the shipping bill and in GST Invoice.

- x. The Department of Delhi Customs has issued a FAQ on refund of IGST on goods export out of India, wherein in answer to question No.16 it was stated that after the implementation of GST, it was explained in the advisories that the details an exporter is required to enter in the invoice column while filing the SB pertains to the invoice issued by him compliant to GST Invoice Rules. The invoice number shall be matched with GSTIN to validate exports and IGST payment. It was conveyed and reiterated that there should not be any difference between commercial invoice and GST invoice after implementation of GST since as per GST Law, IGST is to be paid on the actual transaction value of the supply between the exporter and consignee which should be the same as the one declared in the commercial invoice.
- xi. In the said refund circular nowhere it refers to FOB value to be compared with taxable value mentioned in export invoice for sanction of refund claim. Further it is emphasised that there is no terminology defined as FOB value under GST Law. As far as expenditure incurred to the extent of freight shall be part of value of supply in terms of Section 15 of CGST Act, 2017.
- xii. The declared transaction value ie C&F value in their export invoices as the value recorded in the GST invoice should be the transaction value as determined under Section 15 of CGST Act, 2017 read with Rules made thereunder.
- xiii. So far as GST Law is concerned, valuation of supply, both DTA sales (supply within India) and export of goods is governed under Section 15 of CGST Act, 2017 only. In other words, there is no separate legal provision for valuation with regard to export of goods. As per clause (c) of Section 15 (2) of CGST Act, 2017, incidental expenses before delivery of goods shall form part of value of such supply.
- xiv. The appellant relied upon the judgment in the case of M/s.Ashapura Overseas Pvt.ltd ; wherein it was held that value of supply of goods shall be transaction value as per Section 15 of CGST Act, 2017. Further it was held that pursuant to Rule 89 of CGST Rules, 2017 provision of refund of unutilized ITC envisage value of the goods and not FOB.
- xv. That they are entitled to full refund amount of Rs.29,19,456/- in accordance of GST Law as claimed in application.
- xvi. The approach of the department by rejecting partial refund is arbitrary, illegal and bad in Law as they have considered FOB value instead of transaction value in terms of Section 15 of CGST Act and ignored the definition of turnover of zero rated supply of goods as given in refund Rules. In view of the previously mentioned submissions the appellant requested that their claim of refund is current and in accordance with Law.
- xvii. In view of above submission the appellant requested to accept their submission ; to quash the impugned order to the extent of rejection of refund of Rs.5,40,892/-.

4. Personal hearing was held on dated 18-7-2022. Shri Devam S Sheth and Shri Saket Shah, authorized representatives appeared on behalf of the appellant on virtual mode. They stated that they have nothing more to add to their written submission till date.



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 on the ground that the adjudicating authority has wrongly considered FOB value as per shipping bill for turnover of zero rated supply of goods instead of transaction value and thereby wrongly rejected refund to the extent of Rs.5,40,892/- to the appellant.

6. As per Section 15 of CGST Act, 2017 the value of taxable supply of goods is transaction value which is actually paid or payable and includes all related expenses, ie any amount charged by the supplier on supply of goods form part of transaction value. Under Section 7 of IGST Act, 2017 export of goods is considered as inter-state supply and as per Section 20 of IGST Act, 2017, the provisions of CGST Act, 2017 relating to time and value of supply is also made applicable to integrated tax under IGST Act, 2017. Concurrent reading of above statutory provisions leads that in case of export of goods the value of goods charged in the invoices and paid by the recipient of goods is the transaction value of export goods and hence this value need to be taken towards turnover of zero rated supply of goods in the formula prescribed under Rule 89 (4) of CGST Rules, 2017. However, I find that CBIC in para 47 of Circular No.125/44/2019-GST 18-11-2019 has clarified 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 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 between 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. The Circular further clarifies 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. Thus, the Circular envisage a situation where value of goods as per invoice was less than value as per shipping bill and vice versa. In the subject case the appellant has taken invoice value towards turnover of zero rated supply of goods whereas the adjudicating authority has taken FOB value as per shipping bill which was lower than the invoice towards turnover of zero rated supply of



goods. In this regard, on scrutiny of sample copy of invoices and corresponding shipping bills submitted in appeal, I find that in some of invoices the appellant has supplied goods on cost basis and under some of invoices supplied the goods charging cost and freight in USD/INR terms. On correlating the invoices with corresponding shipping bills I find that cost and freight as per invoices and FOB and freight in shipping bill are same in USD and more or less same in INR as under:

| Invoice Number and date | Cost as per invoice In USD/INR | Freight as per Invoice USD/INR | Total as per Invoice USD/INR | Shipping Bill No. and date | FOB value as per shipping Bill taken in appeal |
|-------------------------|-----------------------------------|-----------------------------------|---------------------------------|----------------------------|--|
| MA/SA/241 5-8-2021 | 7660/ 564542 | 5150/ 379555 | 12810/ 944125 | 3654163/ 5-8-2021 | 7660/ 564570 |
| MA/SA/256 10-8-2021 | 3546/ 260276 | 1000/ 73400 | 4546/ 333676 | 3778221/ 11-8-2021 | 3546/ 260276 |
| MA/SA/287 26-8-2021 | 3478/ 255633 | 1700/ 124950 | 5178/ 380583 | 4144547/ 26-8-2021 | 3478/ 255633 |
| MA/SA/237 4-8-2021 | 27138/ 2000059 | 0 | 27138/ 2000059 | 3626390/ 4-8-2021 | 27138/ 2000058 |
| MA/SA/244 10-8-2021 | 5976/ 440431 | 0 | 5976/ 440431 | 3759835/ 10-8-2021 | 5976/ 438638 |
| MA/SA/245 10-8-2021 | 25056/ 1839110 | 0 | 25056/ 1839110 | 3755127/ 10-8-2021 | 25056/ 1839110 |
| MA/SA/260/ 12-8-2021 | 24040/ 1764595 | 0 | 24040/ 1764595 | 3807732/ 12-8-2021 | 24040/ 1764595 |

8. In view of above I find that there is no difference in value of goods as per export Invoices and FOB value as per shipping bills. I further find that in the impugned order FOB value was taken on verifying shipping bills in Icegate portal. However no data showing FOB value of shipping bill as per Icegate portal and no data comparing the value as per invoices and FOB value as per shipping bill was given either in the show cause notice or in the impugned order. However, on the basis of documents made available to me, I am of the view that neither the situation envisaged in the aforesaid Circular exist in this case nor the value declared in shipping bill was lower than the value declared in invoice so as to consider the FOB as per shipping bills towards turnover of zero rated supply of goods.

9. I further find that in the refund application the appellant has shown value of zero rated supply of goods and adjusted total turnover at Rs.8,58,13,912/- as per invoices which indicate that during the claim period except zero rated supply of goods no other outward supply was made by the appellant which will form part of adjusted total turnover. However, in the impugned order the adjudicating authority has taken FOB value of Rs.6,99,15,035/- as per shipping bill towards turnover of zero rated supply of goods but taken adjusted total turnover at Rs. 8,58,13,912/-, which is the invoice value. Apparently, this result in adopting two different values for same zero rated supply of goods which I find is not a rational and logical method and not in consonance with statutory provisions. Therefore,

I find that the same value of zero rated supply of goods taken for turnover of zero rated supply of goods need to be taken in adjusted total turnover also for arriving admissible refund. In other words in cases where there is only zero rated supply of goods, the turnover of zero rated supply of goods and adjusted total turnover will remain the same in the formula prescribed under Rule 89 (4) of CGST Rules, 2017. In the subject case the claim was filed taking into account Net ITC of Rs.29,19,456/- which is not disputed. Accordingly, even 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 for determining the admissible refund and in such instance the appellant will be entitled to refund of Rs.29,19,456/- claimed by them. The above view was also mandated in CBIC Circular No.147/03/2021-GST dated 12-3-2021 wherein it was clarified that for the purpose of Rule 89 (4) the value of export/zero rated supply of goods to be considered to be included while calculating adjusted total turnover will be the same as being determined as per the amended definition of turnover of zero rated supply of goods in the said sub rule.

10. In view of above, I find that impugned order passed by the adjudicating authority rejecting refund of Rs.5,40,892/- on the grounds mentioned therein is not proper and legal and deserve to be set aside. Therefore, I allow this appeal with consequential benefit to the appellant. I further order that any claim of refund made in consequent to this Order may be dealt with in accordance with CGST Act and Rules made thereunder. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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


11. The appeals 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,

M/s.Maxim Exports,
708, Mauryansh Elanza,
Shyamal Cross Road, Satellite,
Ahmedabad 380 015

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 Assistant Commissioner, CGST, Division VIII, Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

