



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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- क फाइल संख्या : File No : GAPPL/ADC/GSTP/184/2021 -APPEAL /3150 - 55
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-90/2022-23**
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. **ZR2404210214072 DT. 19.04.2021** issued by Assistant Commissioner, Division V, Odhav, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

The Assistant Commissioner, CGST, Division VII, 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 VII, Ahmedabad South (hereinafter referred to as the appellant) has filed the present appeal on dated 13-10-2021 against Order No.ZR2404210214072 dated 19-4-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the adjudicating authority) sanctioning refund of Rs.43,91,127/- to M/s.GS Tradelink, (Shri Jigneshkumar Gautam Patel) D 401, Ground Floor, Rioddhi Complex, Hirakumar Co-Opve Housing Society, Jodhpur, Ahmedabad 380 015 (hereinafter referred to as the 'respondent').

2. The fact of the case is that the respondent has filed refund claim for Rs.43,91,127/- for refund of ITC accumulated due to export without payment of duty vide ARN No.AA240421033578E dated 10-4-2021 under Section 54 (3) of CGST Act, 2017. After verification the adjudicating authority sanctioned refund of Rs.43,91,127/- vide impugned order. During review of claim it was observed that the respondent has filed refund under the category of export without payment of tax (accumulated ITC) and has taken net ITC of Rs.77,64,547/- while calculating the available refund amount. However on perusal of GSTR1 for the month of December 2020 it was observed that the respondent vide Invoice NO.Exp 38/2020-2021 dated 28-12-2020 has also export goods valued at Rs.6,23,468/- on payment of GST @ 28% of Rs.1,74,570/- and Cess @ 160% of Rs.9,97,548/-. The refund of integrated tax paid on goods exported out of India is not governed under Section 54 (3) of CGST Act, 2017 but it is governed by Rule 96 of CGST Rules, 2017 and is deemed to have been filed as soon as export manifest and GSTR3B return for the said period has filed. Thus, the claimant has already got the benefit of refund of Rs.11,72,118/- which is required to deducted from the claim amount of Rs.43,91,127/- sanctioned to the respondent as the net ITC of Rs.77,64,547/- includes the ITC availed on the inputs used in the supply of goods export on payment of tax vide Invoice No.Exp/38/2021-2022 dated 28-12-2020 and the respondent has already got the refund of tax paid on said goods exported on payment of tax under Rule 96, ibid. Thus, the excess refund sanctioned amounting to Rs.11,72,118/- is required to be demanded and recovered from the claimant. In view of above, the appellant filed the present appeal on the ground that the adjudicating authority has erred in granting refund of Rs.43,91,127/- inasmuch as the net ITC of Rs.77,64,547/- include inputs used in the supply of goods exported on payment of tax as explained in foregoing paras. Thus, the amount of refund granted in excess of Rs.11,72,118/- is required to be demanded and recovered from the respondent. In view of above the appellant requested to set aside the impugned order wherein the adjudicating authority has erroneously sanctioned refund of Rs.43,91,127/- instead of Rs.32,19,009/- and also requested to pass order directing the original authority to demand and recover the amount erroneously refunded of Rs.11,72,118/- with interest.

3. The respondent vide letter dated 15-7-2022 contended that they had exported total five shipment during the month of December 2020 and out of five one shipment that is export invoice number Exp/38/2021 dated 28-12-2020 against the payment of IGST (Tax Cess) and the remaining four shipment where exported under LUT without payment of duty. They had received



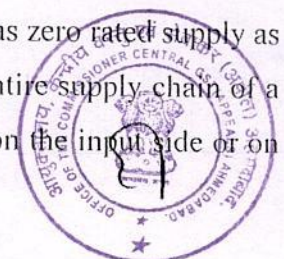
refund amount of IGST of Rs.1,75,570/- and Cess of Rs.9,97,548/- as per export manifest after filing GST return under Rule 96 of CGST Rules, 2017. They had applied for refund of ITC on inputs which are used for export of goods without payment of duty under LUT. In short they had applied for the refund under Section 54 (3) of CGST Act, 2017 in RFD 01 for only four shipment where goods exported under the LUT without payment of duty ie in respect of Export Invoice No.Exp/35/2020-2021 dated 9-12-2020, No. Exp.36/2020-2021 dated 22-12-2020, Exp 37/2020-2021 dated 24-12-2020 and Exp/39/2020-2021 dated 30-12-2020. They had taken only these four shipments value while filing RFD 01A, refund of ITC formula has also taken with the same amount. The respondent has also submitted copy of RFD 01, GSTR1 and Statement 3.

4. Personal hearing was held on dated 18-7-2022. No one appeared on behalf of the appellant. Shri Bhadresh Mistry, authorized representative appeared on behalf of the respondent on virtual mode. He stated that he has nothing more to add to their written submission till date.

5. 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, the appellant filed appeal on the ground that the adjudicating authority has sanctioned refund of Rs.43,91,127/- instead of admissible refund amount of Rs.32,19,009/- and thereby sanctioned excess refund of Rs.11,72,118/- to the respondent. The grounds further state that the during the claim period the respondent has made zero rated supply of goods on payment of tax under Invoice No.38/2020-2021 and already received refund of tax of Rs.11,72,118/- paid on such supply of goods. Therefore, the respondent is entitled for refund of Rs.32,19,009/- only ie Rs.4391127 (-) 1172118 as the Net ITC of Rs.77,64,547/- includes ITC availed on input used in the supply of goods exported on payment of tax. The respondent in their written submissions has admitted receipt of refund of tax paid on zero rated supply of goods made on payment of tax. However, they contended that the present claim was filed taking into account turnover of zero rated supply of goods made without payment of tax only.

6. I have gone through the GSTR1 and GSTR3B returns for the month of December 2020 and find that the total value of goods supplied during the month of December 2020 was Rs.26,18,205/-, out of it value of non-zero rated supply of goods was Rs.5,14,050/- ; value of zero rated supply of goods on payment of tax was Rs.6,23,468/- and value of zero rated supply of goods without payment of tax was Rs.14,80,688/- and net ITC availed was Rs.77,64,544/-. On further verification refund application, I find that the respondent has claimed refund taking into account turnover of zero rated supply of goods of Rs.14,80,688/-, adjusted total turnover at Rs.26,18,205/- and net ITC at Rs.77,64,547/-. Therefore, it is apparent that claim was made only in respect of zero rated supply of goods made without payment of tax. I further find that neither the turnover of zero rated supply of goods nor the adjusted total turnover value was disputed in the present appeal.

7. I find that under GST Law, exports and supplies to SEZ are treated as zero rated supply as per section 16 of the IGST Act, 2017. By zero rating it is meant that the entire supply chain of a particular zero rated supply is tax free i.e. there is no burden of tax either on the input side or on

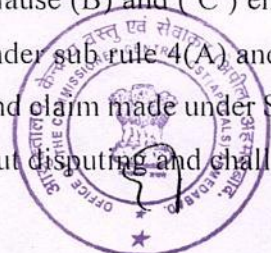


output side. The objective of zero rating of exports and supplies to SEZ is sought to be achieved through the provision contained in Section 16(3) of the IGST Act, 2017, which mandates that a registered person making a zero rated supply is eligible to claim refund in accordance with the provisions of section 54 of the CGST Act, 2017, under either of the following options, namely: –

i) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax (IGST) and claim refund of unutilised input tax credit of Central tax (CGST), State tax (SGST) / Union territory tax (UTGST) and integrated tax (IGST); or ii) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied. The refund under first category of supply is governed under Section 54 (3) of CGST Act, 2017 read with Rule 89 (4) of CGST Act, 2017 and refund under second category of supply is governed under Section 54 read with Rule 96 of CGST Rules, 2017.

8. I find that refund of ITC on zero rated supply of goods without payment of tax and refund of tax paid on export of goods are governed by separate provisions. There is no bar in claiming refund of ITC on export made without payment of tax and refund of tax paid on export of goods for the same claim period. In the subject case, the respondent made zero rated supply of goods in the month of December 2020 both on payment of tax and without payment of tax and claimed refund of tax paid on such supply of goods under Rule 96 of CGST Rules, 2017 and filed refund of ITC on export of goods made without payment of tax under Section 54 (3) of CGST Act, 2017 read with Rule 89 (4) of CGST Rules, 2017.

9. As per definition of Net ITC and Turnover of zero rated supply of goods given under clause (B) and (C) of Rule 89 (4) of CGST Rules, 2017, "Net ITC" means input tax credit availed on inputs and input services 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 Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both. Thus, for the purpose of arriving admissible refund of ITC on export of goods, the ITC and turnover of zero rated supply of goods in respect of which refund under sub rules 4 (A) and 4(B) of Rule 89 (4) is claimed only need to be excluded. In the subject appeal, the appellant seeks to exclude refund sanctioned under Section 16 of IGST Act, 2017 from the refund claim under Section 54 (3) of CGST Act, 2017 on the ground that respondent was already benefitted with ITC to the extent involved on refund claimed under Section 16 of IGST Act, 2017. I find this ground is not well reasoned and not well founded one. Firstly, the definition of Net ITC and turnover of zero rated supply of goods given under clause (B) and (C) envisage to exclude Net ITC and turnover pertaining to refund claim made under sub rule 4(A) and 4 (B) only but do not seek to exclude net ITC and turnover in respect of refund claim made under Section 16 of IGST Act, 2017 ; secondly the grounds in appeal is made without disputing and challenging



the Net ITC and turnover of zero rated supply of goods taken in the refund application and thirdly the grounds in appeal is made without quoting the relevant Sections of CGST Act, or Rules of CGST Rules, 2017 which restrict refund under Section 54 (3) of CGST Act, 2017. Therefore, in absence of any statutory provisions and without disputing and challenging the net ITC and turnover of zero rated supply of goods, I do not find any merit or legality in the grounds made in appeal so as to set aside the impugned order and order recovery of excess refund.

10. In view of above, I do not find any infirmity in the impugned order passed by the adjudicating authority sanctioning refund of Rs.43,91,127/- 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।

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

Date :

Attested

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

To,
The Assistant Commissioner,
CGST, Division VII,
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) M/s.GS Tradelink, (Shri Jigneshkumar Gautam Patel) D 401, Ground Floor, Rioddhi Complex, Hirakumar Co-Opve Housing Society, Jodhpur, Ahmedabad 380 015
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File/PA file

Additional Commissioner (Appeals)

