



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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फाइल संख्या : File No : GAPPL/ADC/GSTD/275/2022 -APPEAL / 3259 - 3262

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-92/2022-23**

दिनांक Date : **24-08-2022** जारी करने की तारीख Date of Issue : **26-08-2022**

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. **ZZ2404210308572 DT. 27.04.2021**

issued by The Deputy Commissioner, CGST, Division-VII, Ahmedabad South

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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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



**ORDER IN APPEAL**

The Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the appellant) has filed the present appeal on dated 22-10-2021 against Order NO.ZZ2404210308572 dated 27-4-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, CGST, Division VII, Ahmedabad (hereinafter referred to as the adjudicating authority) sanctioning refund to M/s.Medisurg International (Mihir Shantilal Patel), A/217, II Floor, Trithraj Complex, Opp Hasubhai Chamber, Paldi, Ahmedabad 380 006 (hereinafter referred to as the respondent).

2. Briefly stated the fact of the case is that the respondent registered under GSTIN 24BELPP9685J1ZM has filed refund claim for Rs.60,89,407/- for refund of ITC accumulated due to export without payment of tax under Section 54 (3) of CGST Act, 2017. After verification of the claim the adjudicating authority vide impugned order sanctioned refund of Rs.60,89,407/- to the respondent. During review of said claim it was observed that the turnover of zero rated supply was taken as Rs.20,43,54,208/- which is the invoice value of goods exported whereas as per shipping bill FOB value, the turnover of zero rated supply was Rs.18,73,93,715/-. As per para 47 of CBIC Circular NO.125/44/2019-GST dated 18-11-2019 it was clarified that during the processing of refund claim, the value of goods cleared in 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, applying the formula for refund of export without payment of tax, the refund admissible comes to Rs.55,84,013/- instead of Rs.60,89,407/-. Accordingly there is excess sanction of refund of Rs.5,05,394/- to the respondent which is required to be recovered along with interest. The details are as under:

Claim period	Turnover of zero rated supply (invoice value)	Turnover of zero rated supply (FOB value)	Net ITC	Adjusted total turnover	Refund sanctioned	Refund admissible	Excess refund sanctioned
April 2020 to March 2021	204354208	187393715	6089407	204354208	6089407	5584013	505394

3. In view of above, the appellant filed the present appeal on the following grounds:

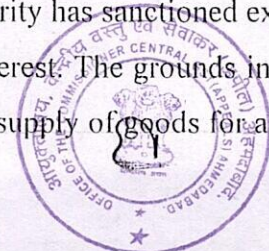
- i. The adjudicating authority has failed to consider the lower value of zero rated turnover while granting refund claim of ITC accumulated due to export of goods without payment of tax as required under Circular NO.125/44/2019-GST dated 18-11-2019 which has resulted in excess payment of refund of Rs.5,05,394/- to the respondent.
- ii. In view of above grounds the appellant requested to set aside the impugned order wherein the adjudicating authority has erroneously sanctioned Rs.60,89,407/- instead of Rs.55,84,013/- under Section 54 (3) of CGST Act, 2017 and to pass order directing the original authority to demand and recover the amount erroneously refund of Rs.5,05,394/- with interest and to pass any order as deem fit in the interest of justice.

4. The respondent vide letter dated 15-7-2022, 18-7-2022 and 26-7-2022 and filed cross objection and submitted relevant documents wherein they interlia made submissions as under:

- i. They are engaged in trading of all types of orthopaedic implants and surgical instruments since the year 2011 and are 100% exporters and there is no sale in India.
- ii. The respondent requested to consider invoice value instead of FOB value as per Order in Appeal No.AHM-CGST-001-APP-ADC-156/2021-2022 dated 28-3-2022 passed in the case of M/s.U Square Life Science Pvt.Ltd.
- iii. The working of excess refund in appeal is totally unreasonable.
- iv. That their turnover is 100% export unit and no sales in local area across India. So the refund claimed is within limit even if refund if computed considering invoice value. The refund amount computed considering the transaction value reported in GSTR1 and GSTR3B as per Statement 3 and Statement 3A is Rs. 204354208/- where refund claimed by them is Rs.187393715/- as per FOB value and thus the difference is Rs.16960493/- found as export freight, export insurance, export commissioner mentioned in the shipping bill hence the amount was decreased so the total difference is against 100% export sales like as per FOB value and as per invoice value.
- v. They also relied on judgement of Hon'ble High Court of Gujarat in the case of M/s.Parekh Plasticochem Distributors LLP Vs UOI (2022 (03) LCX0159).
- vi. The common practice of Customs Department upto 12.5% raised export commission against export sales, the shipping bill FOB value is not reduced from the Customs Department. But above 12.5% raised export commissioner against export sales than FOB value was changed in the shipping bill from the customs departments. As per CBIC Circular NO.33/2019-Customs dated 19-9-2019.
- vii. They had shown invoice value in the books as per RBI guidelines daily dollar rate but the Customs department has fixed dollar rate upto 3-4 days and there is no change in dollar rate in every days in the shipping bill. Hence the foreign currency fluctuation are created in the books of FY 2020-2021.
- viii. In view of above submission the respondent requested to please consider their clarification as per case law of M/s.U Square Life Science Pvt.Ltd and allow and consider their actual refund as per invoice value.

5. Personal hearing was held on dated 18-7-2022. No one appeared on behalf of the appellant. Shri Tejas V Panchal, Advocate and authorized representative appeared on behalf of the respondent on virtual mode. He stated that they have nothing more to add to their written submission till date.

6. I have carefully gone through the facts of the case, grounds of appeal, submission 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. The grounds in appeal is that the respondent has taken invoice value as turnover of zero rated supply of goods for arriving admissible



refund whereas the turnover of zero rated supply of goods should be FOB value as per shipping bill 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 comes to less than the sanctioned amount resulting in excess sanction of refund of Rs.5,05,394/- to the respondent.

7. 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 dated 18-11-2019 has clarified as under:

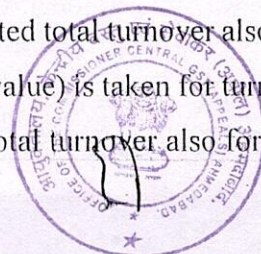
*47. It has also been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs 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.*

8. 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 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 respondent has taken invoice value towards turnover of zero rated supply of goods whereas appellant has taken the stand that FOB value as per shipping bill which was lower than the invoice value needs to be taken towards turnover of zero rated supply of goods. In this regard, on scrutiny of sample copy of invoices and corresponding

shipping bills submitted by the respondent, I find that in some of invoices the respondent has supplied goods on cost basis and under some of invoices supplied the goods charging cost, freight and insurance in USD/Euro terms. However, as per worksheet showing invoice value and shipping bill annexed to appeal and submitted by the respondent, I find that in Indian rupee terms the invoice value of all consignments was Rs.20,43,54,208/- and shipping bill value was Rs.18,73,97,716/-. Apparently shipping bill value was less than the invoice value in INR terms. Since the Circular No.125/44/2019-GST dated 18-11-2019 envisage to compare the invoice value with shipping bill and to adopt lower value for arriving the admissible refund under Section 54 (3) read with Rule 89 (4) of CGST Rules, 2017, I am of the view that in the subject case shipping bill value which is lower value need to be taken for turnover of zero rated supply of goods in the formula prescribed under Rule 89 (4) of CGST Rules, 2017. Therefore, in concurrence with grounds of appeal I hold that the adjudicating authority erred and failed to consider lower value between invoice and shipping bill as turnover of zero rated supply of goods while granting refund to the respondent.

9. The respondent in their submission requested to consider invoice value instead of FOB value as per shipping bill referring to Order in Appeal No.AHM-CGST-001-APP-ADC-156/2021-2022 dated 28-3-2022 passed in the case of M/s.U Square Life Science P.ltd Vs Central GST, Ahmedabad. In the said case involving identical issue the Order was passed by me wherein I have taken the same view that FOB value as per shipping bill was lower than the invoice value and hence FOB value as per shipping bill need to be taken toward turnover of zero rated supply of goods for determining admissible refund in terms of above Circular. However, in the said case I have also taken the view that the value taken towards turnover of zero rated supply of goods need to be taken towards value export goods in the adjusted turnover also for determining admissible refund. In other words, in the formula prescribed under Rule 89 (4) of CGST Rules, if FOB value is taken for turnover of zero rated supply of goods in numerator, the same value should be taken towards value of export goods for arriving adjusted total turnover. The above view was taken referring to 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. I find that facts and circumstances in the above referred case and in the present case are same. In the present case in their refund application the respondent has taken invoice value towards turnover of zero rated supply of goods as well towards adjusted total turnover. However, in appeal the appellant has taken FOB value as per shipping bill towards turnover of zero rated supply of goods but taken the adjusted total turnover as per refund application 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, applying the clarification issued by the Board vide above Circular 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 for adjusted total turnover also for arriving admissible refund. Consequently, even if the shipping value (FOB value) is taken for turnover of zero rated supply of goods the same value should be taken in adjusted total turnover also for determining

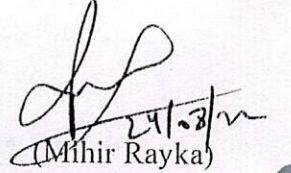


the admissible refund. Therefore in case of any claim period where there is only zero rated supply of goods, the turnover value of zero rated supply of goods at numerator and the value of export goods in total adjusted total turnover at denominator will be same and consequently admissible refund will be equal to ITC claimed. On scrutiny of documents viz Balance sheet, GSTR9 return etc submitted by the respondent, I find that that during the claim period the respondent has made 100% zero rated supply of goods and not made any supply of goods which will form part of adjusted total turnover. Further there is no dispute with regard to Net ITC amount. Accordingly, in this case by taking FOB value as per shipping bill for turnover of zero rated supply of goods and for value of export goods in adjusted turnover, the admissible refund comes at Rs.60,89,047/- and hence I find that there is no excess/erroneous sanction of refund. .

11. In view of above, I find that the adjudicating authority has wrongly taken invoice value for turnover of zero rated supply of goods instead of FOB value as per shipping Bill which is the lower value. However, I also find that by considering FOB value for turnover of zero rated supply of goods the same value need to be taken towards adjusted total turnover and consequently the admissible refund remain the same as sanctioned by the adjudicating authority. Therefore, I find that there is no erroneous/excess sanction of refund arise in this case so as to set aside the impugned order and to order recovery of erroneous/excess refund sanctioned 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 |

12. 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 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.Medisurg International (Mihir Shantilal Patel), A/217, II Floor, Trithraj Complex, Opp Hasubhai Chamber, Paldi, Ahmedabad 380 006
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6)  Guard File/PA file



*Xerox copy Received*  
*[Signature]*  
30/5/2022