



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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DIN- 20230864SW000022272F

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/115/2023 -APPEAL / 5077 - 82

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-100/2023-24

दिनांक Date : 24.08.2023 जारी करने की तारीख Date of Issue : 29-08-2023

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No ZK2411220212158 DT. 18.11.2022 issued by The Assistant Commissioner, CGST, Division-V, Ahmedabad South

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

Appellant	Respondent
M/s. Patel Dairy Products Private limited, A-1, Swagat Industrial Estate, Opp. Water Tank Bhavda Patiya, Village-Kuha, Tal- Daskroi, Ahmedabad-382433 (GSTIN: 24AAJCP9951D1Z8)	The Assistant Commissioner, CGST, Division-V, 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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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**Brief Facts of the Case :**

M/s. Patel Dairy Products Pvt Ltd (Legal Name - Patel Dairy Products Pvt Ltd), A-1, Swagat Industrial Estate, Opp. Water Tank Bhavda Patiya, Village-Kuha, Tal-Daskroi, Ahmedabad - 382433 (hereinafter referred as '*Appellant*') has filed the present appeal against the Refund Sanction/Rejection Order in the form RFD-06 bearing No. ZK2411220212158 dated 18.11.2022 (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, CGST, Division - V, Ahmedabad South (hereinafter referred as '*Adjudicating Authority*').

2. Briefly stated the fact of the case is that the '*Appellant*' is engaged in business of Milk, Cream, Yogurt and other dairy products. The Appellant is holding GST Registration - GSTIN No.24AAJCP9951D1Z8 had filed the refund application of "*ITC accumulated due to Inverted Tax Structure*" for the Financial Year 2020-2021 on dated 09.01.2023 for Rs.9,84,550/-. In response to said refund claim a Show Cause Notice dated 21.10.2022 was issued to the '*Appellant*'. It was proposed that refund application is liable to be rejected for the reasons "*Other*" with Remark as "*As the Adjusted Total Turnover is wrong, claimant has wrongly taken less amount than the actual Adjusted Total Turnover. It is also noticed that you have not reversed the ITC as per the provisions of Rule 42 of the GST Rules, 2017.*"

Thereafter, the '*adjudicating authority*' has rejected the partial amount of refund claim of Rs.7,56,954/- vide '*impugned order*' wherein a Remarks mentioned as:-

- (a) "*I find that as per GSTR 3B for the relevant period, the Adjusted Total Turnover found to be Rs. 11,63,82,770/-. Hence, taking the found Adjusted Total Turnover, I calculate the refund which come to Rs. 2,27,596/- only and reject the remaining amount of claim.*"
- (b) "*The refund has been restricted to the ITC as per those invoices, details of which are uploaded by the supplier in Form GSTR-1 and are reflected in Form GSTR-2A of the applicant in terms of Circular No. 135/05/2020-GST dated 31.03.2020.*"
- (c) "*Details of computation of refund claim amount and the admissible amount is tabulated as under:*"



Calculation As per the original refund claim filed by the Claimant.

Turnover of inverted rated supply of goods (1)	Tax payable on such inverted rated supply of goods(2)	Adjusted total turnover (3)	Net Input Tax Credit (4)	Maximum refund amount to be claimed (5)((1*4)/3-2)
8,63,83,068	43,18,661	9,97,70,867	61,25,112	9,84,550.07

Calculation after verification of Data available and documents submitted by the claimant.

Turnover of inverted rated supply of goods (1)	Tax payable on such inverted rated supply of goods(2)	Adjusted total turnover (3)	Net Input Tax Credit (4)	Maximum refund amount to be claimed (5)((1*4)/3-2)	Refund claimed by claimant in application	Refund amount sanctioned	Amount rejected
8,63,83,068	43,18,661	11,63,82,770	61,25,112	9,84,550.07	9,84,550	2,27,596	7,56,954

3. Being aggrieved with the impugned order dated 18.11.2022 the 'Appellant' has filed the present appeal on dated 04.01.2023 on the following grounds :

- The appellant deny all the allegations / observations raised in the show cause notice and state that the refund order is not sustainable.
- The refund claim has been rejected on the basis of adjusted total turnover.

The basic provision of Rule 89(5) of CGST Rules, 2017.

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation: - For the purposes of this sub-rule, the expressions -

- (a) "Net ITC" shall mean input tax credit availed on inputs 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
 - (b) "Adjusted Total Turnover" means the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period.
- While calculating the adjusted total turnover, the exempt supplies have to be deducted from the total turnover and accordingly, the calculation as under:

Particulars	Amount (In Rs.)
B2B Sales	77983819.34
B2C Sales	64429471.89
Less Credit Note	1419349.41
Less: Exempted	42975815.34
Total adjusted turnover	98018126.48
Taken into refund application	99770867.05
Difference	1752740.57

-While determining the adjusted total turnover amount of Rs. 11,63,82,770/- department has considered the exempted supplies twice and so calculation is incorrect.

In view of above submissions and grounds of appeal the appellant has made prayer as under :

- To set aside the order of denial of Refund claim to Rs. 7,56,954/-.
- Allow the refund claim with consequential relief if any.

Personal Hearing:-

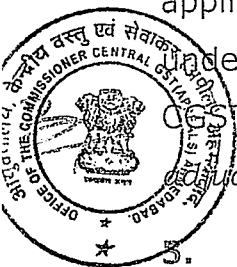
4. Personal Hearings in the matter were offered to the "Appellant" on 11.07.2023, 18.07.2023 and on 27.07.2023. During the Personal Hearing Mr. Vipul Khandhar, C.A., was appeared as authorized representative and submitted written submission and reiterated the same. The Adjudicating Authority is not commensurate to the legal provision and Rule 89(5) of CGST Rules and accordingly re-verification is required, therefore request to remand back the case.

Discussion and Findings :

4. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. I find that the 'Appellant' had preferred the refund application for refund of "ITC accumulated due to Inverted Tax Structure" under Rule 89(5) of the CGST Rules, 2017 read with Section 54 of the CGST Act, 2017. Out of the total refund claim of Rs.9,84,550/-, the adjudicating authority has rejected refund of Rs.7,56,954/-.

5. I find that appellant in the present matter contended that adjudicating authority failed to take actual Total Turnover Rs.9,97,70,867/- in place of Rs.11,63,82,770/- while considered for calculating the admissible Refund amount. Appellant further contended that While determining the adjusted total turnover amount of Rs. 11,63,82,770/- department has considered the exempted supplies twice and so calculation is incorrect.

6. Further, I find that vide impugned order, adjudicating authority has stated that as per GSTR 3B for the relevant period, the Adjusted Total Turnover found to be Rs. .11,63,82,770/-, accordingly refund amount comes to Rs. 2,27,596/-. Adjudicating authority further stated that the refund has been restricted to the ITC as per those invoices, details of which are uploaded by the supplier in Form GSTR-1 and are reflected in Form GSTR-2A of the applicant in terms of Circular No. 135/05/2020-GST dated 31.03.2020.



7. In view of above, I do not find any such statutory documents/evidence produced by the Appellant or Respondent which substantiate their claim that actual Adjusted Total Turnover is Rs.9,97,70,867/- or Rs.11,63,82,770/-. In the present appeal the appellant and respondent are disputing about the correct amount of Adjusted Total Turnover to be considered for calculating the admissible Refund amount. However, I do not find any coherent/logical or reasoned submission made by both the party regarding calculation of the actual Adjusted total turnover.

8. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, I allow the appeal of the "Appellant" with a direction to the proper officer to consider the submissions of *appellant* and process the refund application after due verification of documents/details of *appellant*. The 'Appellant' is also directed to submit all relevant documents/submission before the *adjudicating authority*.

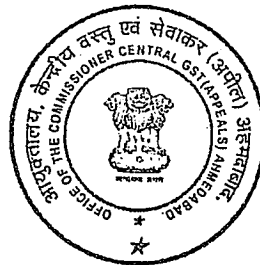
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

Adesh Kumar Jain
24/08/2023
(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: 24.08.2023

Attested

Sandheer Kumar
(Sandheer Kumar)
Superintendent (Appeals)
Central Tax, Ahmedabad
By R.P.A.D.



To,
M/s. Patel Dairy Products Pvt Ltd,
(Legal Name – Patel Dairy Products Pvt Ltd),
A-1, Swagat Industrial Estate,
Opp. Water Tank Bhavda Patiya,
Village-Kuha, Tal-Daskroi,
Ahmedabad – 382433

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Dy/Asstt. Commissioner, CGST, Division-V, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File



