



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- 20230964SW0000111810

रजिस्टर्ड डाक ए.सी. द्वारा

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फाइल संख्या : File No : GAPPL/ADC/GSTD/78/2023 -APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-103/2023-24**

दिनांक Date : **28.08.2023** जारी करने की तारीख Date of Issue : **01-09-2023**

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

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

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Arising out of Order-in-Original **ZC2408220294411 DT. 25.08.2022** issued by The Assistant Commissioner, CGST, Division-V, Ahmedabad South

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

Appellant	Respondent
The Assistant Commissioner, CGST, Division-V, Ahmedabad South	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)

(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**Brief Facts of the Case :**

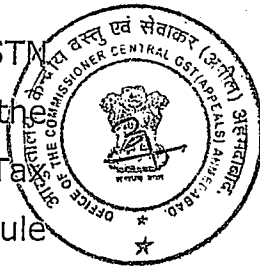
The Deputy Commissioner, CGST, Division V, Ahmedabad South (hereinafter referred to as the *appellant/department*) has filed the following appeal offline in terms of Advisory No.9/2020 dated 24-9-2020 issued by the Additional Director General (Systems), Bengaluru against Order No. ZC2408220294411 dated 25.08.2022 (hereinafter referred to as the *impugned order*) passed by the Assistant Commissioner, CGST, Division V, Ahmedabad South (hereinafter referred to as the *adjudicating authority*) sanctioning refund 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 (hereinafter referred to as the *Respondent*).

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date (<i>'impugned orders'</i>)
GAPPL/ADC/GSTD/78/2023- APPEAL Dated 24.02.2023	67/2022-23 20.02.2023	Dated ZC2408220294411 25.08.2022

2. Brief facts of the case are that the '*Respondent*' holding GSTIN No. 224AAJCP9951D1Z8 had filed refund claim of Rs.27,10,532/- for the period April 2019 to March 2020 for ITC accumulated due to Inverted Tax Structure vide ARN No. AA2408220024471 dated 01.08.2022 under Rule Section 54(3) of the CGST Act, 2017. Out of said refund claim of Rs.27,10,532/- the *adjudicating authority* vide impugned order dated 25.08.2022 (RFD 06) has sanctioned refund of Rs.19,99,010/- and rejected refund claim of Rs.7,11,522/- on the ground that declared Net ITC was found more than actual Net ITC.

During Review of the '*Impugned Order*' dated 25.08.2022 the department has observed as under :

- that the taxpayer is supplying exempted goods as well as taxable supplies. On going through the Annexure-B and GSTR-2A, it appears that the claimant has taken ITC of various goods having HSN viz; 3923, 3924, 2106, 9802, 0801, 3215, 7413, 1806, 1805, 1701, 4821, 8413, 5909, 4421, 0405, 3402, 8481, 9612, 8412, 1009,



8443, 8466, 3917, 1905, etc. which are used partly for effecting taxable supplies and partly for effecting exempt supplies.

- Rule 42 of the CGST Rules, 2017 specifies the manner of determination of ITC in respect. of inputs or input services and reversal thereof. Sub Rule (1) of Rule 42 states that: "The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies."
- In this refund claim, it is noticed that the claimant have not reversed the ITC as per provisions of Rule 42 of the CGST Rules, 2017 during the period 2019-2020, it is pertinent to mention that the claimant have made proportionate reversal for the year 2020-2021, but not for the financial year 2019-20, thereby, due to non reversal of proportionate ITC under Rule 42 has enhanced their unutilized ITC. Therefore, excess amount of refund has been sanctioned erroneously by the Adjudicating Authority. As the products are same in both periods, the claimant has to reverse the ITC as per provisions of Rule 42 of the CGST Rules, 2017.



In view of the above, net ITC (Statement-1 [rule 89(5)] should be calculated after proportionate reversal, which is as under:

Aggregated Value of Exempted Supply (E)	Total Turnover in the State of the Registered person during tax period (F)	Common Credit (C2)	Proportionate Reversal (E/F)*C2
64293158	153601635	11432887	4785473

After reversal of proportionate reversal, remaining unutilized ITC available with the claimant for refund is as under:

Total ITC availed in GSTR 3B: Rs. 1,14,32,887/-

Proportionate Reversal as per above: Rs. 47,85,473/-

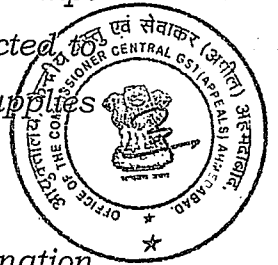
Net ITC available : Rs. 66,47,414/-

- In view of the above, maximum refund amount to be claimed is as under:

Turnover of inverted rated supply of goods and services (1)	Tax payable on such inverted rated supply of goods and services (2)	Adjusted Total Turnover (3)	Net input tax credit (4)	Maximum refund amount to be claimed (5) [[1*4/3]-2]
82012987	4105386	89308477	6647414	1999010

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

- The adjudicating authority has erred in passing the refund order, the claimant have not reversed the ITC as per provisions of Rule 42 of the CGST Rules, 2017.
- As per Section 17(2) of the CGST Act, 2017; "Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies."
- Rule 42 of the COST Rules, 2017 specifies the manner of determination of ITC in respect of inputs or input services and reversal thereof. Sub Rule (1) of Rule 42 states that: "The input tax credit in respect of inputs or input services, which attract the provisions of sub-section(1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies."
- Further, Rule 89(2) (h) of COST Rules, 2017 stipulate that refund claim on account of accumulated ITC (where such accumulation is on account of inverted duty structure) has to be accompanied by a statement containing the number and date of invoices received and issued during a tax period. Rule 89(3) of COST Rules, 2017 also provide that where the application relates to refund of input tax credit, the electronic credit



ledger shall be debited by the applicant in an amount equal to the refund so claimed.

- Thus, it is noticed that the adjudicating authority has erred in passing the refund order, as the claimant have not reversed the ITC as per provisions of Rule 42 of the COST Rules, 2017, thereby resulting in excess amount being erroneously sanctioned by the Adjudicating Authority; thereby the excess refund amounting to Rs. 7,11,522/- is required to be recovered alongwith interest.

4. The Respondent has submitted their submission on 27.07.2023. The Respondent has submitted that –

- When the appellant has already reversed ITC as per Section 42 and intimated and clarified to the department, demand of refund amount back has not been sustainable and tenable.
- If department has found any deficiency in refund claim then department has to issue ASTM-10 and follow the procedure of Section 73, demand of refund claim back will not suffice the proper procedure under GST provision.
- Calculation sheet of the refund amount as under:

	Turnover of inverted rated supply of goods and services (1)	Tax payable on such inverted rated supply of goods and services (2)	Adjusted Total Turnover (3)	Net input tax credit (4)			Maximum refund amount to be claimed (5) [(1*4/3)-2]
				As per GSTR-3B	As per 2A	w.e. is less	
19-20	81552873	4084733	89308471	9906713	7441489	7441489	2710533

- GSTR-3B credit has been reversed by the Rs. 11432872/- less ITC reversible Rs. 1526159/-, net balance Rs. 9906713/-, where as we have claimed refund on the reflected ITC in GSTR-2A, even though it has been same amount.
- Set aside the order of denial of refund claim of Rs. 7,11,522/-.

Personal Hearing :

5. Personal Hearing in the matter was held on 27.07.2023 wherein Mr. Vipul Khandar, C.A. was appeared on behalf of the 'Respondent' as authorized representative. During PH he has filed cross

objection and reiterated the same. It is detailed in Para1 of Cross Objection that they have taken the less amount of ITC than the ITC available for the refund i.e. Rs. 1,14,32,872/- against that appellant has taken only Rs. 74,41,489/-. Therefore even if the amount of Rs. 15,26,159/- which is said to be proportionate reversal is reduced even then this will not effect the net amount of refund sanctioned to them. Therefore appeal filed by the department may be rejected.

Discussion and Findings :

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 *Respondent* has filed the refund application of accumulated ITC due to Inverted Tax Structure for the period from April 2019 to March 2020 on 01.08.2022. The *adjudicating authority* has sanctioned the partial amount of said refund claim to the *Respondent* vide *impugned order*. By referring the provisions of Section 54 of the CGST Act, 2017, the *department/appellant* in the present appeal has mainly contended that as the respondent have not reversed the ITC as per provision of rule 42 of the CGST Rule 2017, the excess amount of refund claim of Rs.7,11,522/- so erroneously sanctioned by *adjudicating authority* is required to be recovered with interest.

7. I find that the *department* is mainly relying upon the provisions of Section 17(2) of the CGST Act, 2017 and Rule 42(1) and Rule 89(5) of the CGST Rules, in the present appeal. Accordingly, the same are reproduced as under :

Section 17. Apportionment of credit and blocked credits.-

(2) *Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.*

Rule 42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof. -

(1) *The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section(2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies.*



Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-

Sub-rule (5) of Rule 89 prescribes the formula for computing the refund on account of inverted duty structure. The formula prescribed under Rule 89 (5) is reproduced below, as under:

"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

8. I find that the department has contended in the present appeal that the Respondent has not reversed the ITC as per provisions of Rule 42 of the CGST Rules, 2017 during the period 2019-2020, thereby, due to non reversal of proportionate ITC under Rule 42 has enhanced their unutilized ITC. Therefore, excess amount of refund has been sanctioned erroneously by the Adjudicating Authority.

Net ITC (Statement-1 [rule 89(5)] calculated after proportionate reversal by the appellant/ department is as under:

Aggregated Value of Exempted Supply (E)	Total Turnover in the State of the Registered person during tax period (F)	Common Credit (C2)	Proportionate Reversal (E/F)*C2
64293158	153601635	11432887	4785473

After reversal of proportionate reversal, remaining unutilized ITC available with the claimant for refund is as under:

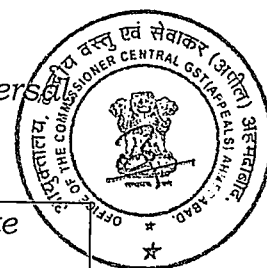
Total ITC availed in GSTR 3B: Rs. 1,14,32,887/-

Proportionate Reversal as per above: Rs. 47,85,473/-

Net ITC available : Rs. 66,47,414/-

- In view of the above, maximum refund amount to be claimed is as under:

Turnover of inverted rated supply of goods and services (1)	Tax payable on such inverted rated supply of goods and services (2)	Adjusted Total Turnover (3)	Net input tax credit (4)	Maximum refund amount to be claimed (5) [(1*4/3)-2]
82012987	4105386	89308477	6647414	1999010



9. I find that in support of their claim the Respondent has submitted Net ITC Statement, calculated after proportionate reversal, is as under:

Year	ITC of HSN 39	Exempted Turnover	Adjusted Turnover	Reversal of ITC required
2019-20	3552801	63414810	147625604	1526159

After reversal of proportionate reversal, remaining unutilized ITC available for refund is as under:

Total ITC availed in GSTR 3B: Rs. 1,14,32,872/-

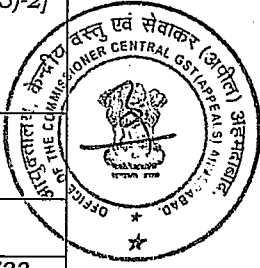
Proportionate Reversal as per above: Rs. 15,26,159/-

Net ITC available : Rs. 99,06,713/-

Net ITC taken as per 2A and GSTR3B, whichever is lower is : Rs. 74,41,489/-

- In view of the above, maximum refund amount to be claimed by the appellant is as under:

	Turnover of inverted rated supply of goods and services (1)	Tax payable on such inverted rated supply of goods and services (2)	Adjusted Total Turnover (3)	Net input tax credit (4)			Maximum refund amount to be claimed (5) [(1*4/3)-2]
	As per GSTR-1	As per GSTR-1	As per GSTR-3B	As per GSTR-3B	As per 2A	w.e. is less	
19-20	81552873.14	4084733	89308471	9906713	7441489	7441489	2710533



11. In view of above, I find that in the instant case, the Respondent has considered Input Tax Credit amounting to Rs.74,41,489/- in the Net ITC considered for the purpose of calculation of admissible refund of Rs. 27,10,533/-. However, the appellant/department has considered Input Tax Credit amounting to Rs. 66,47,414/- in the Net ITC considered for the purpose of calculation of admissible refund of Rs. 19,99,010/-. Due to mismatch of Net ITC there is a difference between refund amount of Rs. 7,11,522/-. In view of above, I find that the *adjudicating authority* has sanctioned the refund claim in the present matter without considering the correct amount of Net ITC as discussed in above paras, which resulted into sanctioned of erroneous Refund of Rs. 7,11,522/-.

12. In view of above discussions, I find that the *impugned order* is not legal and proper and therefore, it requires to be set aside to the extent of sanction of excess amount of refund. Accordingly, the appeal filed by the 'Department/Appellant' is allowed and set aside the '*impugned order*' to the extent of sanction of excess amount of refund of Rs. 7,11,522/- only. The 'Respondent' is also directed to submit all the relevant documents/submission before the refund sanctioning authority and the refund Sanctioning Authority shall verify the facts again and pass order accordingly.

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

The appeal filed by the *appellant/department* stands disposed of in above terms.

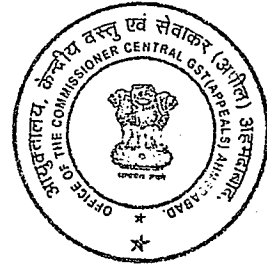
Adesh Kumar Jain
28/08/2023

(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: .08.2023

Attested

[Signature]
(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

