



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- 20230964SW000000EB6B

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/82/2023 -APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-104/2023-24

दिनांक Date : 29.08.2023 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)

ग Arising out of Order-in-Original ZK2408220173955 DT. 16.08.2022 issued by The Assistant Commissioner, CGST, Division-VII, Ahmedabad South

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

Appellant	Respondent
The Assistant Commissioner, CGST, Division-VII, Ahmedabad South	M/s. Jindal World wide Limited, Jindal Corporate House, opp. D-Mart, I.O.C. Petrol Pump Lane, Shivranjani, Shyamal, 132 Ft Ring Road, Satellite, Ahmedabad-380015 (GSTIN 24AAACJ3816G1ZX)

(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 Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the 'Appellant/Department') in terms of Review Order No. 65/2022-23 dated 13.02.2023 issued under Section 107 of the CGST Act, 2017, has filed the present appeal offline in terms of Advisory No.9/2020 dated 24.09.2020 issued by the Additional Director General (Systems), Bengaluru. The appeal is filed against Order No. ZK2408220173955 dated 16.08.2022 (hereinafter referred to as the *Impugned Order*) passed in Form-GST-RFD-06 by the Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the *Adjudicating Authority*) sanctioning refund to **M/s. Jindal World Wide Limited**, Jindal Corporate House, Opposite D-Mart, I.O.C. Petrol Pump Lane, Shivranjani, Shyamal, 132 Ft Road, Satellite, Ahmedabad - 380 015 (hereinafter referred to as the 'Respondent').

2. Briefly stated the facts of the case is that the *Respondent* registered under GSTN No.24AAACJ3816G1ZX had filed a refund claim of Rs.1,97,57,289/- for refund of ITC accumulated due to export without payment of duty vide ARN No. AA240722106554I dated 27.07.2022 for the period of May 2022 under Section 54 (3) of the CGST Act, 2017. After verification of the refund claim the *adjudicating authority* found the claim in order and accordingly sanctioned the said refund claim to the *Respondent* vide *impugned order*.

During Review of the 'Impugned Order' dated 16.08.2022 the department has observed as under:

- During review of refund claim it was observed that excess amount of refund has been sanctioned to the respondent in accordance with Rule 89 (4) of CGST Rules, 2017 read with Section 54 (3) of CGST Act, 2017. It was observed by the department that the adjudicating authority has taken Adjusted total turnover of supply as Rs 3,28,40,47,548/-, whereas, as per the GSTR 3B return for the month of May, 2022, the Adjusted total turnover of supply is Rs.3,64,09,93,700/-.
- While calculating Adjusted turnover in refund claim of ITC accumulated due to export of goods/services without payment of tax, the Adjudicating Authority has considered Outward taxable supplies (other than zero rated, nil rated and exempted) value (Domestic value) given in GSTR 3B, however, the same should be total of Domestic value and Export value. Also, as per Rule 89 (4), which has been defined under sub-section (112) of Section 2 of CGST Act 2017, the Invoice Value (Domestic + Export) is applicable for calculating Adjusted turnover and not, only the Domestic value.

- Sub-rule (4) of Rule 89 prescribes the formula for computing the refund of unutilised ITC payable on account of zero-rated supplies made without payment of tax. The formula prescribed under Rule 89 (4) is reproduced below, as under:

"Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC / Adjusted Total Turnover".

- Adjusted Total Turnover has been defined in clause (E) of sub-rule (4) of Rule 89 as under: "Adjusted Total Turnover" means the sum total of the value of- (a) the turnover in a State or a Union territory, is defined under clause (112) of section 2, excluding the turnover of services; "Turnover in state or turnover in Union territory" as referred to in the definition of "Adjusted Total Turnover" in Rule 89 (4) has been defined under sub-section (112) of Section 2 of CGST Act 2017, as: "Turnover in State or turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes Central tax, State tax, Union territory tax, Integrated tax and cess".
- Further, Para 8 of Notification No.14/2022 - Central Tax dated 05.07.2022, in rule 89, (c) in sub-rule (4) has been amended where the following Explanation has been inserted, namely: -Explanation. - For the purposes of this sub-rule, the value of goods exported out of India shall be taken as - (i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or (ii) the value declared in tax invoice or bill of supply, whichever is less.;
- Thus, taking the higher value of Adjusted total turnover from GSTR 3B (Rs. 3,64,09,93,700/-), applying the formulae for refund of export without payment of tax, the refund admissible comes to Rs.1,78,20,376/- and not Rs. 1,97,57,289/- sanctioned by the sanctioning authority. Thus, there is excess sanction of refund of Rs. 19,36,913/- to the claimant which is required to be recovered along with interest.

Turnover of Zero rated supply (1)	Adjusted Total Turnover of supply as per GSTR-3B (2)	Net ITC (3)	Refund Amount sanctioned (4)	Refund Amount Admissible (5) (1*3/2)	Excess Refund Amount Sanctioned (6)
305020328	3640993700	212719839	19757289	17820376	1936913

- In view of above, the department has considered that excess amount of refund has been sanctioned to the claimant. Accordingly, the department is of the view

that the said excess amount of erroneous refund of Rs.19,36,913/- is required to be recover along with interest.

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

- The adjudicating authority has erred in calculating the refund amount by taking wrong value of Rs. 3,28,40,47,548/- as Adjusted total turnover of supply instead of correct Adjusted total turnover of Rs. 3,64,09,93,700/-. On applying formulae for refund of export without payment of tax on the correct value of Adjusted total turnover, the refund admissible comes to Rs. 1,78,20,376/- and not Rs. 1,97,57,289/- which was sanctioned by the sanctioning authority. Thus, there is excess sanction of refund of Rs. 19,36,913/- to the claimant which is required to be recovered along with interest.
- Thus, While calculating Adjusted turnover in refund claim of ITC accumulated due to export of goods/services without payment of tax, the Adjudicating Authority has considered Outward taxable supplies (other than zero rated, nil rated and exempted) value (Domestic value) given in GSTR 3B, however, the same should be total of Domestic value and Export value. Also, as per Rule 89 (4), which has been defined under sub-section (112) of Section 2 of CGST Act, 2017, the Invoice Value (Domestic + Export) is applicable for calculating Adjusted turnover and not, only the Domestic value.
- Therefore, it is required to recover said amount of erroneous refund of Rs.19,36,913/- alongwith interest from the Respondent as narrated in above paragraphs.
- In view of above, the appellant/department has made prayer for set aside the impugned order wherein the adjudicating authority has erroneously sanctioned excess refund of Rs. 19,36,913/- under Section 54 (3) of CGST Act, 2017; to pass an order directing the original authority to demand and recover the amount erroneously refunded to the Respondent with interest; to pass any other orders as deem fit in the interest of justice.



Submissions of the Respondent :

4. Personal Hearing in the matter was held on 25.07.2023, 04.08.2023 and 24.08.2023 wherein Mr. Binit Shah, C.A. was appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has submitted written submission dated 24.08.2023 and 28.08.2023 and stated that -Due to clerical error, total turnover figure was taken as Rs. 3,28,40,47,548/- instead of Rs. 3,64,09,93,700/-. Thus the excess refund of Rs. 19,36,913/- is passed to us. We have paid back amount of excess refund granted to us, and filled of DRC-03 debit entry no. DC2408230301499 dated 23.08.2023. The respondent further submitted additional written submission dated 28.08.2023 and stated that we have made payment of interest of Rs.

3,48,645/- (interest at 18% on 19,36,913/- at 18% P.A. from 26.08.2022 to 23.08.2023) on excess refund granted to us for May 2022 vide DRC-03 debit entry no. DC2408230322394, dated 28.08.2023 and requested to set aside the appeal filed by the Assistant Commissioner, CGST, Div-VII, Ahmedabad South as we have also paid back excess GST refund with interest granted to us.

Discussion and Findings :

5(i). I have carefully gone through the facts of the case, grounds of appeal, submissions 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 taken Adjusted total turnover of supply as Rs 3,28,40,47,548/-, whereas, as per the GSTR 3B return for the month of May, 2022, the Adjusted total turnover of supply is Rs.3,64,09,93,700/-. While calculating Adjusted turnover in refund claim of ITC accumulated due to export of goods/services without payment of tax, the Adjudicating Authority has considered Outward taxable supplies (other than zero rated, nil rated and exempted) value (Domestic value) given in GSTR 3B, however, the same should be total of Domestic value and Export value. Also, as per Rule 89 (4), which has been defined under sub-section (112) of Section 2 of CGST Act 2017, the Invoice Value (Domestic + Export) is applicable for calculating Adjusted turnover and not, only the Domestic value.

5(ii). I further find that as defined in clause (E) of sub-rule (4) of Rule 89, adjusted total turnover Sub-rule (4) of Rule 89 prescribes the formula for computing the refund of unutilised ITC payable on account of zero-rated supplies made without payment of tax. The formula prescribed under Rule 89 (4) is reproduced below, as under:

"Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC / Adjusted Total Turnover".

5(iii). Thus, taking the higher value of Adjusted total turnover from GSTR 3B (Rs. 3,64,09,93,700/-), applying the formulae for refund of export without payment of tax, the refund admissible comes to Rs.1,78,20,376/- and not Rs. 1,97,57,289/- sanctioned by the sanctioning authority. Thus, there is excess sanction of refund of Rs. 19,36,913/- to the claimant which is required to be recovered along with interest.

Turnover of Zero rated supply (1)	Adjusted Total Turnover of supply as per GSTR-3B (2)	Net ITC (3)	Refund Amount sanctioned (4)	Refund Amount Admissible (5) (1*3/2)	Excess Refund Amount Sanctioned (6)
305020328	3640993700	212719839	19757289	17820376	1936913

6. Further, I find that the *Respondent* vide letter dated 24.08.2023 and 28.08.2023 have informed that they have already paid back the refund amount to the Department with interest. The *Respondent* has produced the copies of DRC-03 according to which the *Respondent* has paid the amount by debiting Cash Ledger vide Debit Entry No. DC2408230301499 dated 23.08.2023 DC2408230322394, dated 28.08.2023 for Rs. 19,36,913/- towards Tax and Rs.3,48,645/- towards Interest. Therefore, I find that the *Respondent* has accepted the view of the *Department*.

7. In view of above discussions, I find that the *impugned order* is not legal and proper and therefore, require to be set aside. Accordingly, the appeal filed by the '*Department*' is allowed and modified the '*impugned order*' to the above extent.

अपीलकर्ताद्वारा दर्ज की गई अपीलकानिपटाराउपरोक्ततरीकेसेकियाजाताहै।

The Appeal filed by '*Department*' stand disposed off in above terms.

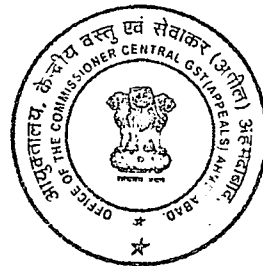
Adesh Kumar Jain
29/08/2023

(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: 29.08.2023

Attested

(Signature)
(Sandheer Kumar)
Superintendent (Appeals)



By R.P.A.D.

To,
The Assistant / Deputy Commissioner,
CGST, Division - VII, Ahmedabad South.

M/s. Jindal World Wide Limited,
Jindal Corporate House, Opposite D-Mart,
I.O.C. Petrol Pump Lane, Shivranjani, Shyamal,
132 Ft Road, Satellite,
Ahmedabad - 380 015.

Appellant

Respondent

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-VII, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

