



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 ३८००१९.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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टेलिफैक्स 07926305136



DIN- 20230964SW000000AB28

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/160/2023 -APPEAL/5123-28ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-105/2023-24**  
दिनांक Date : **31.08.2023** 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 **ZL2410220267079 DT. 26.10.2022** issued by The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South

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

| Appellant  | Respondent  |
|--|---|
| The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South | M/s. Dorina Pharmaceutical Private Limited, A-1107,11, Solitaire Corporate park, Near Divya Bhaskar Press, S.G. Highway, Makarba, Ahmedabad- 380051 (GSTIN 24AAICCD858P1Z5) |

|       |   |
|-------|---|
| (A)   | इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।<br>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 -<br>(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<br>(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।<br>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-VIII Ahmedabad South (hereinafter referred to as the '**Appellant/Department**') in terms of Review Order No. 04/2023-24 dated 21.04.2023 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. ZL2410220267079 dated 26.10.2022 (hereinafter referred to as the '**Impugned Order**') passed in Form-GST-RFD-06 by the Assistant Commissioner, CGST, Division VIII, Ahmedabad South (hereinafter referred to as the '**Adjudicating Authority**') sanctioning refund to **M/s. Dorina Pharmaceutical Private Limited**, A-1107, 11, Solitaire Corporate Park, Near Divya Bhaskar Press, S.G.Highway, Makarba, Ahmedabad 380051 (hereinafter referred to as the '**Respondent**').

2(i). Briefly stated the fact of the case is that the *Respondent* registered under GSTN No.24AAICD8508P1Z5 had filed refund claim of Rs.96,609/- for the period of 01.12.2021 to 31.07.2022 for refund of ITC accumulated due to export of goods/services without payment of tax vide ARN No. AA240822105437F dated 30.08.2022. After verification, the *Adjudicating Authority* had found some discrepancies and issued SCN on 15.09.2022. The claimant had replied to the SCN on 20.09.2022 and accordingly, the *Adjudicating Authority* has sanctioned an amount of Rs. 96,609/- to the claimant vide *impugned order* dated 26.10.2022.

2(ii). During review of said refund claim it was observed by the *Department/Appellant* that the Adjusted turnover of supply has been taken as Rs.7,69,804/- which is FOB value, whereas, as per GSTR 3B return for the period between 01.12.2021 to 31.07.2022, the Adjusted total turnover of supply is Rs.8,34,579/-. While calculating Adjusted Turnover, the *Adjudicating Authority* has taken FOB Value, which is lower than Invoice Value, however, the same should be Invoice Value instead of FOB Value as the same is higher than FOB value. Also, the invoice value is applicable in calculating Adjusted turnover and not FOB Value in light of Rule 89 (4) of CGST Rules, 2017 read with sub-section (112) of Section 2 of CGST Act, 2017. Thus, taking the higher value of Adjusted total turnover from GSTR 3B (Rs.8,34,579/-) and applying the same in formula for refund of export without payment of tax, the admissible refund comes Rs.89,111/- instead of

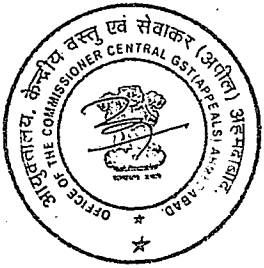
Rs.96,609/- as sanctioned by the sanctioning authority. Thus, there is excess sanction of Refund of Rs.7,498/- to the claimant which is required to be recovered along with interest.

| Turnover of Zero rated supply<br>(1) | Adjusted Total Turnover of supply as per GSTR-3B<br>(2) | Net ITC<br>(3) | Refund Amount Sanctioned<br>(4) | Refund Amount Admissible<br>(5)<br>(1*3/2) | Excess Refund Amount sanctioned<br>(6) |
|--------------------------------------|---|----------------|---------------------------------|--|--|
| 769804                               | 834579  | 96609          | 96609                           | 89111                                      | 7498                                   |

3. In view of above facts, the Appellant/Department has filed the present appeal on following grounds:

- Adjudicating Authority has considered Rs.8,34,579/- as Adjusted Total Turnover instead of correct amount of Adjusted Total Turnover of Rs.7,69,804/- in the prescribed formula. This has resulted into sanction of excess refund of Rs.7,498/-.
- The Adjusted Total Turnover is calculated considering FOB Value, which is lower than Invoice Value, however, the same should be Invoice Value instead of FOB value. Also, the invoice value is applicable in calculating Adjusted total turnover and not FOB Value in terms of Rule 89 (4) of CGST Rules, 2017 read with sub-section (112) of Section 2 of CGST Act, 2017.
- Rule 89(4) of the CGST Rules, 2017 prescribes the formula for computing the admissible amount of refund of unutilized ITC on account of zero rated supplies made without payment of tax. Same is reproduced as under :  

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$
- "Adjusted Total Turnover" has been defined in clause (E) of Rule 89(4) of CGST Rules, 2017 as under :  
 (E) "Adjusted Total Turnover" means the sum total of the value of-  
 (a) the turnover in a State or a Union territory, as 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

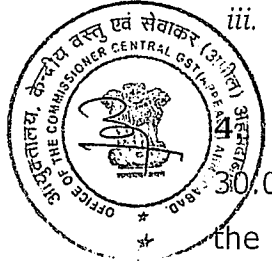


person but excludes central tax, State tax, Union territory tax, integrated tax and cess.

- 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.”

In view of above, the appellant/department has made prayer as under:

- i. To set aside the impugned order, wherein adjudicating authority has erroneously sanctioned Rs.96,609/- instead of Rs.89,111/-, under Section 54(3) of the CGST Act, 2017.
- ii. To pass an order directing the said original authority to recover and appropriate the amount erroneously refunded of Rs.7,498/- (Rs,96,609/- - Rs,89,111/-) with interest.
- iii. To pass any other order(s) as deemed fit in the interest of justice.



Personal hearing in the present matter was held on dated 30.08.2023, wherein Mr. Gopal Krishna Laddha, CA appeared on behalf of the Respondent as authorised representative. During PH he has submitted written submission dated nil. He has further stated that they have nothing more to add to their written submission till date. The Respondent in their aforesaid written submission has referred Rule 89(4) of the CGST Rules, 2017. The Respondent has also referred Notification No. 14/2022-Central Tax dated 05.07.2022 and Board's Circular No.147/03/2021-GST dated 12.03.2021 for computing the adjusted total turnover. The Respondent has mainly contended that –

- They have taken FOB value for value of goods exported in refund application for the period 01.12.2021 to 31.07.2022 and said application sanctioned vide impugned order dated 26.10.2022 with refund amount of Rs.96,609/-
- They have objection with respect to calculation of refund as calculated in appeal at para No. 1.8 in Statement of Facts, considering the value declared in tax invoice/bill of supply instead of FOB value for goods exported.

- That the department has computed the refund amount considering the FOB value of exports in numerator and transaction value of exports declared in GST returns in denominator and arrived at revised refund amounting to Rs.89,111/- as against refund claim by the Respondent amounting to Rs.96,609/- and raised demand of Rs.7,498/- considering the same as excess refund granted.
- That the appeal filed by department is contrary to Point No.3 of CBIC Circular No.197/09/2023 dated 17.07.2023 and also not in conformity to the provisions of Rle 89(4), thus merits rejection.

In view of above submissions, the Respondent has made prayer that the impugned order may be consider or set aside the same and sanctioned refund of Rs.96,609/-.

### Discussion and Findings:

5. 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 in the present case appeal is filed against impugned order wherein refund of accumulated ITC due to export without payment of tax amounting to Rs.96,609/- was sanctioned. The appellant/department in the present appeal mainly contended that the Adjusted Total Turnover is the "sum total of the value of the turnover in a state or a Union territory, as defined under clause 112 of Section 2 of the CGST Act, 2017" i.e. inclusive of Zero Rated supplies and Local supplies and the adjudicating authority has considered value of zero rated supplies as per FOB Value instead of Invoice Value; accordingly, granted excess amount of refund of Rs.7,498/- to the Respondent.

6. I refer para 4 of CBIC Circular NO.147/03/2021-GST dated 12-3-2021, wherein Board has given guidelines for calculation of adjusted total turnover in an identical issue as under :

4. The manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules, 2017.

4.1 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"



4.2 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, as defined under clause (112) of section 2, excluding the turnover of services; and (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding- (i) the value of exempt supplies other than zero-rated supplies; and (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.’

4.4 “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



5 From the examination of the above provisions, it is noticed that “Adjusted Total Turnover” includes “Turnover in a State or Union Territory”, as defined in Section 2(112) of CGST Act. As per Section 2(112), “Turnover in a State or Union Territory” includes turnover/ value of export/ zero-rated supplies of goods. The definition of “Turnover of zero-rated supply of goods” has been amended vide Notification No.16/2020-Central Tax dated 23.03.2020, as detailed above. In view of the above, it can be stated that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of “Turnover of zero-rated supply of goods”, need to be taken into consideration while calculating “turnover in a state or a union territory”, and accordingly, in “adjusted total turnover” for the purpose of sub-rule (4) of Rule 89. Thus, the restriction of 150% of the value of like goods domestically supplied, as applied in “turnover of zero-rated supply of goods”, would also apply to the value of “Adjusted Total Turnover” in Rule 89 (4) of the CGST Rules, 2017.

4.6 Accordingly, it is clarified that for the purpose of Rule 89(4), the value of export/ zero rated supply of goods to be included while calculating “adjusted total turnover” will be same as being determined

as per the amended definition of "turnover of zero-rated supply of goods" in the said sub-rule.

Applying the above clarification, the value of turnover of zero rated supply of goods taken towards turnover of zero rated supply of goods need to be taken same value in adjusted total turnover for zero rated supply of goods also in the formula.

7. Further, I find that as per definition of adjusted total turnover, defined in clause (E) of sub-rule (4) of Rule 89, the adjusted total turnover includes value of all outward supplies of goods and services made during the relevant period including zero rated (export) supply of goods but exclude value of inward supplies which are liable to reverse charge. Thus, in the formula prescribed under Rule 89 (4) of CGST Rules the value of zero rated turnover of goods comes at numerator as well as in total adjusted turnover at denominator. In identical cases of refund the above Circular envisage to adopt the same value of export/zero rated supply of goods in turnover of zero rated supply of goods as well as in adjusted total turnover in the formula. In the present matter, the value of zero rated turnover is considered as FOB value as per shipping bill by the *appellant/department*. However, the value of zero rated turnover in adjusted turnover is taken as per GSTR 3B; which imply that turnover of zero rated supply in adjusted total turnover is taken as invoice value. Apparently, this result in adopting two different values for same zero rated supply of goods, which I find is factually wrong method and not in consonance with Circular above. Therefore, I am of the considered view that the same value of zero rated supply of goods taken as turnover of zero rated supply of goods need to be taken in adjusted total turnover also towards value of zero rated (export) supply of goods.

8. Further, I find that *Appellant/Department* has referred the Notification No. 14/2022-Central Tax dated 05.07.2022 issued by the CBIC in the present appeal proceedings. The relevant portion of Notification is reproduced as under :

G.S.R... (E). -In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

8. In the said rules, in rule 89, —

(c) in sub-rule (4), the following Explanation shall be 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."*

In the present matter I find that the *Respondent* has considered the FOB value for the Zero rated Turnover in the RFD-01 i.e. refund applications and the *department/appellant* is not disputing about the same in the present appeal. However, the department is disputing about the value of adjusted total turnover only.

9. Also, as per Board's Circular No.197/09/2023-GST dated 17.07.2023, it has been clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022-CT dated 05.07.2022, the value of the goods exported out of India to be included while calculating "adjusted total turnover" will be same as being determined as per the Explanation inserted in the said sub-rule.

10. In view of the above discussions and Board's Circular No. 197/09/2023-GST dated 17.07.2023, I find that the *impugned order* passed by the *adjudicating authority* is proper and as per the provisions of GST law. Therefore, I do not find any reasons to interfere with the decision taken by the *adjudicating authority* vide "*impugned order*" and accordingly, I reject the appeal filed by the *appellant/department*.

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*  
31/08/2023  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)

Date: 31.08.2023

//Attested//

*Viyayalashmi V*  
31/8/2023  
(Viyayalashmi V)

Superintendent (Appeals)

By R.P.A.D.

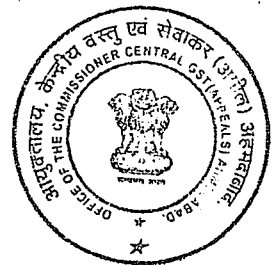
To,

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

Appellant

M/s. Dorina Pharmaceutical Private Limited,

Respondent





A-1107, 11, Solitaire Corporate Park,  
Near Divya Bhaskar Press,  
S.G.Highway, Makarba  
Ahmedabad - 380 051

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/Assistant Commissioner, CGST, Division-VIII, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File: / P.A. File



