



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- 20230964SW000000C10D

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/796/2023 -APPEAL / 5511 - 16

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-106/2023-24
दिनांक Date : 30.08.2023 जारी करने की तारीख Date of Issue : 06.09.2023

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 DT. 17.02.2023 issued by The Assistant Commissioner, CGST, Division-VII, Ahmedabad South

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

Appellant	Respondent
Anchin India LLP, GF/4, Capstone, Opp Motorskalgi Char Rasta, Paldi, Ahmedabad, Gujarat- 380006 (GSTIN: 24ABMFA3539K1Z9)	The Assistant Commissioner of 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) 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 दायर 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

This order arises out of the appeal filed by M/s. ANCHIN (INDIA) LLP, GF-4, CAPSTONE, OPP MOTORS KALGI CHAR RASTA, PALDI, AHMEDABAD, Gujarat-380006 (herein after referred as appellant) against the Order-in-original No. dated 17.02.2023 9in short 'impugned order) passed by the Assistant Commissioner, CGST, Division- VII, Ahmedabad South (in short adjudicating authority) in respect of the refund claim filed by the appellant under the provisions of Section 54 (3)(ii) of the CGST Act, 2017 (in short 'the Act') read with Rule 89(5) of the Central Goods & Services Tax Rules, 2017 (in short 'The Rules');

BRIEF FACTS OF THE CASE:

2. M/s. Anchin (India) LLP, GF-4, CAPSTONE, Opp. Motors Kalgi Char-rasta, Paldi, Ahmedabad, Gujarat-380006 are registered with GSTIN No. 24A4BMFA3539K1Z9. The appellant had filed a refund application under ARN No.AA240123111967G dated 21-01-2023 amounting to Rs. 12,85,576/- for the period from Oct-22 to Dec-22 for the Export done without payment of duty and accumulation of ITC in Form-GST-RFD-01.

2.1 A Show Cause Notice No.ZF2402230110872 dated 08.02.2023 was issued to the appellant on the grounds that the claimant had uploaded FIRC's amounting to Rs.1,55,94,247/- only, whereas the admissible refund comes to Rs.12,82,890/- on the reason that the appellant had not submitted FIRC's for the entire refund amount claimed. The adjudicating authority vide his impugned order has sanctioned only refund amounting to Rs. 12,82,890/- on the above cited reasons.

3. Being aggrieved with rejection of part of refund claim, the appellant filed the present appeal under the provision of Section 107 of the CGST Act, 2017 wherein they interalia submitted ;

- That they are providing 100% export of services relating to accounting and book-keeping and therefore are eligible to claim refund of accumulated ITC and no other income is earned;
- That they filed the refund claim For the period of October-2022 to December-2022 amounting to Rs. 12,85,576/- on 21.01.2023 vide ARN No.AA240123111967G;
- That the uploaded value of FIRC's amounting to Rs.1,55,94,247/- against the value of export invoices Rs.1,56,39,084/- but the department has taken value of zero rated turnover to Rs.1,55,94,247/- and the adjusted turnover considered as Rs.1,56,39,084/- and calculated the admissible refund to Rs.12,81,890/-.

- The appellant had submitted the copy of income reconciliation statement and explained difference between the value of FIRC's and value of export-invoices of Rs.44,836/- is related to bank charges and foreign exchange loss only;

In view of the above facts, the appellant prayed to sanction the wrongly rejected refund of Rs.3,686/-.

Defense Reply

4. Personal Hearing in the matter was held on 25.07.2023 wherein Mr. Darshan Belani, C.A. appeared on behalf of the appellant as authorized representative. During PH apart from the written submission, he has stated that they have received the whole amount of invoice in foreign currency i.e., \$190,542/- the difference is due to currency fluctuation and abnk charges which are admissible deductions and refund amount cannot be reduced. Since the whole invoice amount is received, the invoice value should be taken as per provisions of Rule 89(4) for value of Exports as well as for total adjusted turnover.

5. The appellant vide their written submissions dated 24.07.2023, submitted during personal hearing has made the following submissions.

- That they are providing 100% export of services relating to accounting and book-keeping and therefore are eligible to claim refund of accumulated ITC and no other income is earned;

- That they filed the refund claim For the period of October-2022 to December-2022 amounting to Rs. 12,85,576/- on 21.01.2023 vide ARN No.AA240123111967G;

That the uploaded value of FIRC's amounting to Rs.1,55,94,247/- against the value of export invoices Rs.1,56,39,084/- but the department has taken value of zero rated turnover to Rs.1,55,94,247/- and the adjusted turnover considered as Rs.1,56,39,084/- and calculated the admissible refund to Rs.12,81,890/- based on the following formula;

$$\text{Eligible Refund} = \frac{\text{Zero Rate Turnover}}{\text{Adjusted Turnover}} * \text{Input Tax Credit}$$

- The appellant had submitted the copy of income reconciliation statement and explained difference between the value of FIRC's and value of export invoices of Rs.44,836/- is related to bank charges and foreign exchange loss only;

- That as per their reconciliation statement, the entire value of the Export Invoices of \$ 1,90,542 has been received in foreign currency. Thus, the difference amount of Rs.44,836/- was bank charges and foreign exchange losses only.



- That their business being 100% export services they do not have any domestic services income, and hence the numerator and denominator should be the same in the refund formula and the amount of refund of ITC will have no effect.

Findings & Discussions

6. I have carefully gone through the facts of the case and submissions made by the appellant in the appeals memorandum as well at the time of personal hearing. The limited point to be decided in the matter is whether the refund claims rejected by the adjudicating authority is correct or otherwise.

7. 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.12,81,890/- was sanctioned, while the appellant had claimed refund of Rs. 12,85,576/-. The appellant in the present appeal mainly contended that the uploaded value of FIRC's amounting to Rs.1,55,94,247/- against the value of export invoices Rs.1,56,39,084/- but the department has taken value of zero rated turnover to Rs.1,55,94,247/- and the adjusted turnover considered as Rs.1,56,39,084/- and calculated the admissible refund to Rs.12,81,890/- based on the formula envisaged in Rule 89(4) read with CBIC Circular NO.147/03/2021-GST dated 12-3-2021.

As per para 4 of the aforementioned circular 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"

8. As per CBIC Circular No. 37/11/2018-GST F. No.349/47/2017-GST Government of India Ministry of Finance Department of Revenue Central Board of Excise and Customs GST Policy Wing New Delhi, Dated the 15th March, 2018 BRC / FIRC for export of goods: It is clarified that the realization of convertible foreign exchange is one of the conditions for export of services. In case of export of goods, realization of consideration is not a pre-condition. In rule 89 (2) of the CGST Rules, a statement containing the number and date of invoices and the relevant Bank Realisation Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case of export of services whereas, in case of export of goods, a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant

export invoices is required to be submitted along with the claim for refund. It is therefore clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon. I find in the instant case, the appellants have received the entire invoice amount in their account in foreign currency as per the copy of Inward Remittance Transaction Advice furnished by them during the course of the personal hearing.

9. I find that as per Section 16 (1) of the CGST Act, 2017, the appellant is entitled to take credit of input tax charged on any supply of goods/ services or both which are used or intended to be used in the course or furtherance of his business. Accordingly, bank charges in the refund of accumulated ITC during exports cannot be denied.

10. Also, I find from the contentions made by the appellants in their written submissions along with the working of the refund amount, it is clear that there shall be no effect on the value of an eligible refund, suppose the value of zero rated supplies and value of adjusted turnover will be the same i.e., the numerator and denominator should be the same in the refund formula and therefore the amount of refund of ITC will have no effect, which is reproduced below;



$$\begin{aligned} \text{Eligible Refund} &= \frac{\text{Zero Rate Turnover}}{\text{Adjusted Turnover}} * \text{Input Tax Credit} \\ \text{Eligible Refund} &= \frac{1,56,39,084}{1,56,39,084} * 12,85,576/- = 12,85,576/- \end{aligned}$$

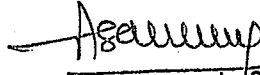
11. Also, as per Board's Circular No.197/09/2023-GST dated 17.07.2023, it has been clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022-CT dated 05.07.2022, the value of the goods exported out of India to be included while calculating "adjusted total turnover" will be same as being determined as per the Explanation inserted in the said sub-rule. Therefore the appellants are entitled for refund of Rs.12,85,576/- as claimed by them.

12. In view of above discussions, I hereby modify the *impugned order* to the above extant and allow the appeal filed by the *appellants*. The '*Appellants*' is

also directed to submit all relevant documents/submission before the Refund sanctioning authority.

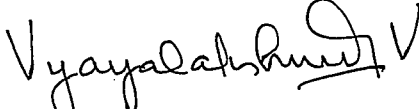
13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

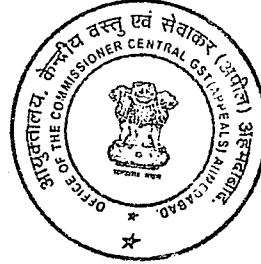
The appeal filed by the appellant stands disposed off in above terms.


(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: .08.2023

//Attested//


(Vijayalakshmi V)
Superintendent (Appeals)
By R.P.A.D.



Appellant

M/s. Anchin (India) LLP,
GF/4, CAPSTONE,
Opp. Motors Kalgi Char Rasta,
Paldi
Ahmedabad - 380 006

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

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

