



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

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क फाइल संख्या : File No : GAPPL/ADC/GSTD/143/2023 -APPEAL 15517 - 22

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-107/2023-24**
दिनांक Date : **31.08.2023** 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 No **ZJ2409220299401 DT. 23.09.2022** 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 of CGST, Division-VII, Ahmedabad South	M/s. Bion International, 16 B, 2nd, Galaxy Mall, Nr. Haridas Park, Satellite, Ahmedabad-380015 (GSTIN:24AA1FB2698H1ZB)

(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 के 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-APPEALBrief 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. 73/2022-23 dated 15.03.2023 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. ZJ2409220299401 dated 12.09.2022 (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. Bion International, 16B, 2nd Galaxy Mall, Nr. Haridas Park, Satellite, Ahmedabad - 380015* (hereinafter referred to as '*the appellant*') has filed the following appeal against the Refund Sanction/Rejection Orders (hereinafter referred as '*Impugned Orders*') passed by the Assistant Commissioner, CGST, Division – VIII, Ahmedabad South (hereinafter referred to as the '*Respondent*').

2(i). Briefly stated the fact of the case is that the *Respondent* registered under GSTN No.24AAIFB2698H1ZB had filed refund claim of Rs.26,44,544/- for the period of April'2022 for refund of ITC accumulated due to export of goods/services without payment of tax vide ARN No. AA240822004892D dated 02.08.2022. After due verification, the *Adjudicating Authority* had found some discrepancies and issued SCN on 25.08.2022 for Rs.26,44,544/- on the ground "other" (value of zero rated supplies is taken as Rs.2,79,83,490/- whereas it comes to Rs.2,06,89,513/-). The claimant had replied to the SCN on 30.08.2022 and accordingly, the *Adjudicating Authority* has sanctioned an amount of Rs. 26,44,544/- to the claimant vide *impugned order* dated 23.09.2022 in the form of GST-RFD-06 to the respondent.

2(ii). During review of said refund claim it was observed by the *Department/Appellant*, that the adjudicating authority had considered the high value of the turnover of zero rated supply i.e., Rs.2,79,83,490/-, which is the invoice value of the goods exported instead of the lower value of goods exported i.e., Rs.2,06,89,512/- which is FOB value as per the shipping bill. 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 and as per para 47 of CBIC Circular No.125/44/2019-GST dated 18.11.2019. Wherein it was clarified that during processing of refund claim, the value of goods declared in the GST invoice and value in the corresponding shipping bill/bill of export should be examined and the lower of the two values should be taken into account while calculating the eligible amount of refund. Thus, taking the lower value of goods exported which is FOB value as per shipping bill and applying formula for refund of export without payment of duty, the admissible refund comes to Rs. 24,11,375/- instead of Rs. 26,44,544/-. Thus, there is an

excess sanction of Refund of Rs.2,33,169/- to the respondent which is required to be recovered along with Interest.

Turnover of Zero rated supply(invoice value) (1)	Turnover of zero rated supply (FOB value which is lower value (2)	Net ITC (3)	Adjusted total turnover (4)	Refund Amount Sanctioned(Invoice value) (5)	Refund Amount Admissible (FOB Value) (6)	Excess Refund Amount sanctioned (7)
27983490	20689512	3263650	28001990	2644544	2411375	2,33,169

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

- Adjudicating Authority has considered Rs.2,79,83,490/- as Adjusted Total Turnover instead of correct amount of Adjusted Total Turnover of Rs.2,06,89,512/- in the prescribed formula. This has resulted into sanction of excess refund of Rs.2,33,169/-.
- 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 :

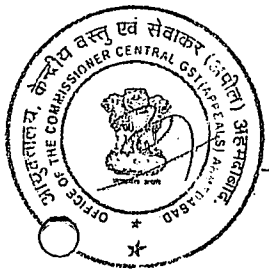
$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

"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.26,44,544/- instead of Rs.24,11,375/-, 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.2,33,169/- (Rs.2644544/- - Rs.2411375/-) with interest.
- iii. To pass any other order(s) as deemed fit in the interest of justice.

Personal hearing:-

Personal hearing was held on dated 31.08.2023. Shri Shakir V. Chauhan, C.A. appeared on behalf of the Respondent as authorised representative. During PH he has submitted written submission dated nil. Further, he stated that two different value of export cannot be taken in formula. Once value of export is taken as per Rule 89(4), the same should be taken for total adjusted turnover in the formula, which is clarified by the CBIC vide Circular No. 197/09/2023 dated 17.07.2023. The Respondent has mainly contended that –

- They are engaged in exports of various goods and their entire sales during the year as well during the period under appeal is exports sales only.
- That during the month of April-2022 their exports FOB INR value was Rs. 2,79,83,490/- having foreign currency value of said goods at 3,71,159 USDs for which detailed statement was submitted.
- That there is no difference in their value of goods exported in foreign currency as well as in INR which are exactly matching with Shipping Bills submitted alongwith their GST Refund application as under Rule 46 of CGST Rules, 2017.
- That the difference in the value of goods exported as worked out by the appellant in the instant case is on account of consideration value of exports considered by the respondent in books of account is at CIF basis while in present appeal it taken at FOB basis. Being in partnership firm, they mandatorily follow various accounting standards as notified by the

Central Government as the Companies (Accounting Standards) Rules, 2021.

- That from reading para 47 of CBIC Circular No.125/44/2019-GST Dated 18.09.2019, it is clear that it is applicable in the case when there is a difference in value of goods, which is applicable only in the case where there is a difference in invoice value and shipping bill value.
- That in their case as they accounted for sales on CIF basis and the appellant considered the FOB basis for the purpose of refund working cannot be covered by the clarification given in para 47 of CBIC Circular No.125/44/2019 dated 18.09.2019.
- That in their case there is no difference in the value of goods as declared in GST Invoice and corresponding Shipping Bill exactly matched due to the value of goods in foreign currency.
- That the formula devised in the para 47 of the subject circular read with Rule 89(4) of the CGST Rules, 2017 does not apply to them as it came into effect from July'2022 onwards, whereas their exports pertained to the period of April'2022.
- That when their turnover of zero-rated supply of goods is reduced by applying the rationale given in para 47 of the subject circular, then correspondingly their total adjusted total turnover should also be reduced and ultimately there would be no any reduction in refund as alleged by the appellant
- 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 Rule 89(4), thus merits rejection.

Discussions & Findings

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.26,44,544/- 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.2,33,169/- 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 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 afore said proviso 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 cess"

4.5 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.

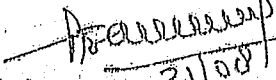
10. The respondent further contended that they are making 100% export supplies and hence even if turnover of zero rated supply of goods is reduced in terms of above Circular, proportionate reduction should also be made in total adjusted total turnover and ultimately there will not be any reduction in admissible refund amount. I find force in above submission also.

11. A close reading of para 47 of Circular No.125/44/2019-GST dated 18.11.2019 further reveals that lower value amount invoice and shipping bill is to be taken for calculating eligible amount of refund and not for arriving zero rated turnover at numerator in the formula. Therefore, I am of the considered view that the same value of zero rated supply of goods taken in turnover of zero rated supply of goods need to be taken in adjusted total turnover also for arriving admissible refund. Consequently, if the shipping value (FOB value) is taken as turnover of zero rated supply of goods, the same value should be taken in adjusted total turnover towards value of zero rated supply of goods and admissible refund should be determined accordingly. In the grounds of appeal also the appellant has taken this value towards adjusted total turnover.

12. 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.

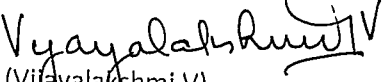

21/08/2023
(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: .08.2023



Appellant

//Attested//


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

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

Respondent

M/s. Bion International,
16-B, 2nd, Galaxy Mall,
Nr. Haridas Park,
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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-VII, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File. / P.A. File

