



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- 20230564SW0000520395

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/STD/393/2022 -APPEAL / 1260 - 65
ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-11/2023-24**
दिनांक Date : **10-05-2023** जारी करने की तारीख Date of Issue : **10-05-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

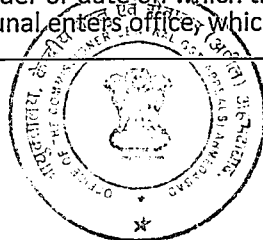
ग Arising out of Order-in-Original No. **ZY2405220229229 DT. 18.05.2022** issued by

The Assistant Commissioner, CGST, Division-V, Ahmedabad South

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

Appellant	Respondent
The Assistant Commissioner, CGST, Division-V, Ahmedabad South	M/s. Elegant Vinyl Private Limited, Survey No. 688/C and 688/B Paiki ni Land, Kubadthal Road, Kubadthal, Daskroi, Ahmedabad-382430

(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.



ORDER IN APPEAL**Brief Facts of the Case :**

The Assistant Commissioner, CGST, Division V, Ahmedabad South (hereinafter referred to as the '**Appellant/Department**') in terms of Review Order No. 47/2022-23 dated 11.11.2022 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. ZV2405220229229 dated 18.05.2022 (hereinafter referred to as the '**Impugned Order**') passed in Form-GST-RFD-06 by the Assistant Commissioner, CGST, Division V, Ahmedabad South (hereinafter referred to as the '**Adjudicating Authority**') sanctioning refund to **M/s. Elegant Vinyl Private Limited**, Survey No. 688/C and 688/B Paiki ni Land, Kubadthal Road, Kubadthal, Daskroi, Ahmedabad - 382 430 (hereinafter referred to as the '**Respondent**').

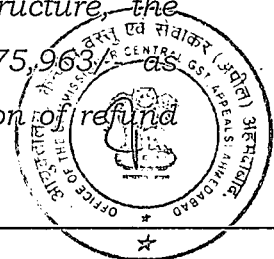
2. Briefly stated the facts of the case is that the *Respondent* registered under GSTN No.24AAECE0590J2ZP had filed a refund claim of Rs.1,12,75,963/- for refund of ITC accumulated due to Inverted Tax Structure vide ARN No. AA240522059841B for the period of October 2021 to March 2022 under Section 54 (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 of Rs.1,12,75,963/- to the *Respondent* vide *impugned order*.

During Review of the 'Impugned Order' dated 18.05.2022 the department has observed as under :

- *During review of refund claim it was observed that higher amount of refund has been sanctioned to the respondent than what is actually admissible to them in accordance with Rule 89 (5) of CGST Rules, 2017 read with Section 54 (3) of CGST Act, 2017.*

3. Accordingly, the *department/appellant* has filed the present appeal on 17.11.2022 on the following grounds :

- *Claimant has shown the Adjusted Total Turnover and Inverted Turnover as Rs.39,14,99,068.64/- and Rs.38,07,14,853.86 for the said period, whereas on perusal of GSTR 1 & 3B returns of relevant period it is noticed that actual Adjusted Total Turnover and Inverted Turnover is Rs.44,18,44,544/- and 38,07,68,481/- respectively.*
- *Thus, taking the actual value of Adjusted Total Turnover and applying the formula for refund of ITC accumulated due to Inverted Tax Structure, the admissible refund comes to Rs.48,12,267/- instead of Rs.1,12,75,963/- as sanctioned by adjudicating authority. Thus, there is excess sanction of refund*



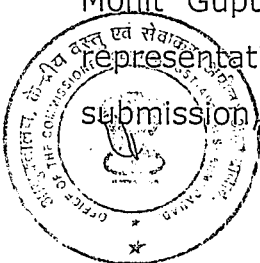
of Rs.64,63,696/- to the claimant which is required to be recovered alongwith interest and penalty as the claimant has shown wrong Adjusted Total Turnover.

Adjusted Total Turnover as per RFD 01 (1)	Adjusted Total Turnover as per GSTR 1 (2)	Net ITC (3)	Inverted rated turnover (4)	Tax payable on inverted supply (5)	Refund amount claimed & sanctioned (6)	Refund Admissible $\{(3*4/2)-5\}$ (7)	Excess Refund Amount Sanctioned (8)
391499068.64	441844544	58373625	380768481	45492386	11275963	4812267	6463696

- Further, Turnover in state or turnover in Union Territory as referred to in the definition of "Adjusted Total Turnover" as per Rule 89(4) of CGST Rules, 2017 has been defined in Section 2(112) of the 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". Accordingly, taxable value should be taken as per Section 15 of the CGST Act, 2017. The claimant has declared Outward taxable supplies (other than zero rated, nil rated and exempted) value in the GSTR 3B returns for the period October 2021 to March 2022 as Adjusted Total Turnover, which amounting to Rs.39,14,99,068.64 and Outward taxable supplies (zero rated) which has not included in Adjusted Total Turnover; which should be taken as the Adjusted Total Turnover of the claimant.
- Thus, it is noticed that the adjudicating authority has erred in passing the refund order, as higher amount of refund has been sanctioned to the claimant by taking lower value of Adjusted Total Turnover; thereby excess refund amounting to Rs.64,63,696/- has been given; which is required to be recovered alongwith interest and penalty.

In view of above, the appellant/department has made prayer for set aside the impugned order wherein the adjudicating authority has erroneously sanctioned Rs.1,12,75,963/- instead of Rs.48,12,267/- under Section 54 (3) of CGST Act, 2017; to pass an order directing the original authority to demand and recover the amount erroneously refunded of Rs.64,63,696/- (Rs.1,12,75,963/- - Rs.48,12,267/-) with interest and penalty; to pass any other orders as deem fit in the interest of justice.

4. Personal Hearing in the matter was held on 19.01.2023, wherein Mr. Mohit Gupta, CA was appeared on behalf of the Respondent as authorized representative. During PH he has stated that they want to submit additional submission which was approved and 07 working days period was granted for the



same. Accordingly, the Respondent has submitted the reply/submission to Appeal, vide communication dated 25.01.2023.

The Respondent in their submission dated 25.01.23 stated that –

- According to department the Adjusted total turnover taken by Respondent is not correct, as per department's calculation it comes to Rs.44,18,44,544/-. By applying the same in formula, admissible refund arrive at Rs.48,12,267/-. Thus, they have claimed excess refund of Rs.64,63,696/-.
- They have calculated Adjusted Total Turnover in compliance with definition as given in Rule 89(4) of the CGST Rules, 2017 which is reproduced 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.]
- Referred sub-rule (4A) and (4B) of Rule 89 of the CGST Rules, 2017.
- Rule 89(4A) stipulates that in case of supplies received on which the supplier has availed the benefit of deemed exports, refund of ITC, availed in respect of other inputs/input services used in making zero-rated supply of goods or services or both, shall be granted.
- As defined under Rule 89(4B), they are of the view that if the benefit of Advance Authorization and EPCG has been availed and the exports have been made under Advance Authorization or EPCG the same exports should be excluded while computing the Adjusted Total Turnover.
- For the covered period they have made all the exports without payment of tax under LUT and hence they have not considered these exports in their computation of Adjusted Total Turnover.
- The shipping Bills of all the exports made during the period are enclosed, which shows that the same are covered under Advance Authorization or EPCG as the case may be.
- Thus, they are of the opinion that they have taken correct Adjusted Total Turnover and have claimed correct amount of refund and have complied with all the requirements as per the provisions of the Act and rules made thereunder.

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 the present appeal was filed to set aside the impugned order of the



the CGST Rules, 2017 and the admissible amount of refund is to be calculated as per following formula :

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}

For the purpose of this sub-rule, the expressions – “Adjusted Total Turnover shall have same meaning as assigned to them in sub-rule (4).

As per sub-rule (4) of Rule 89 of the CGST Rules, 2017

(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; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

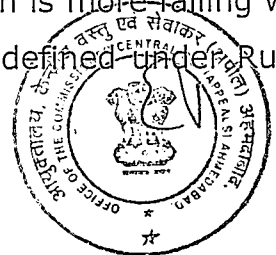
excluding-

(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.]

In view of above stated legal provisions, I am of the view that while computing Adjusted Total Turnover the value of exempt supplies other than zero-rated supplies ; and turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both are require to be excluded. In the instant case, the export clearances made under LUT i.e. without payment of tax by *Respondent* has not been considered by them in the Adjusted Total Turnover and in support of this they have stated in their defence that it is according to the aforesaid definition of Adjusted Total Turnover.

7(ii). On going through the above definition, I am of the considerate view that while computing Adjusted Total Turnover in the matter of refund under sub-rule (5) of Rule 89 the value of exempt supplies other than zero-rated supplies shall be excluded. However, in the present matter the *Respondent* has not produced any such evidence that the turnover they excluded from Adjusted Total Turnover is exempt supplies other than zero-rated supplies. Whereas, according to the *Respondent* they have made all the exports without payment of tax under LUT and hence they have not considered these exports for computing their Adjusted Total Turnover. It is baseless argument, as it has no relevance with exempt supplies, in fact the supplies excluded by them is more falling within the definition of zero-rated supplies of goods/services as defined under Rule 89 of the CGST Rules, 2017.



7(iii). Further, I am of the view that while computing Adjusted Total Turnover in the matter of refund under Rule 89(5), the supplies for which refund claimed under sub-rule (4A) or (4B) shall be excluded. In the present matter the *Respondent* has excluded the certain supplies and contended that the exports made under Advance Authorization or EPCG are excludible as per aforesaid definition of Adjusted Total Turnover. However, I find that the *Respondent* has not produced any such documents/evidence that they have claimed refund under sub-rule (4A) or (4B). As per the aforesaid definition of Adjusted Total Turnover the supplies for which refund is claimed under sub-rule (4A) or (4B) shall be excluded while computing Adjusted Total Turnover, however, in absence of any such evidence I do not find any force in the contention of *Respondent*.

8. In view of foregoing facts, I find that the *Department/Appellant* has rightly considered the Adjusted Total Turnover and Inverted Turnover as Rs.44,18,44,544/- and 38,07,68,481/- respectively which is as per the GSTR 1 and GSTR 3B of relevant period. Accordingly, in terms of prescribed formula as per sub-rule (5) of Rule 89 of the CGST Rules, 2017 the admissible amount of refund is comes to Rs.48,12,267/-. Whereas, in the present matter the *adjudicating authority* has sanctioned the refund of Rs.1,12,75,963/-, thus it resulted into excess sanctioned of refund of Rs. 64,63,696/- (11275963 - 4812267).

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

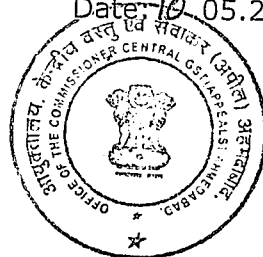
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 10.05.2023



Attested

(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

To,

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

Appellant

M/s. Elegant Vinyl Private Limited,
Survey No. 688/C and 688/B Paiki ni Land,
Kubadthal Road, Kubadthal, Daskroi, Ahmedabad - 382 430

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

