



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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टेलिफैक्स 07926305136



DIN- 20231064SW0000444C32

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/80,156 &157/2023 -APPEAL / 2099 - 2104

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-127/2023-24**

दिनांक Date : **29.09.2023** जारी करने की तारीख Date of Issue : **11.10.2023**

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 Nos. **ZL2408220361144** dated **31.08.2022**, **ZJ2410220214291** dated **20.10.2022** and **ZL2410220266968** dated **26.10.2022** issued by The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South

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

Appellant	Respondent
The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South	Maxim Exports, 708, Mauryansh Elanza, Nr. Parekhs Hospital, Shyamal Cross road, Satellite, Ahmedabad-380015 (GSTIN 24AKQPS8709Q1Z1)

(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 को अपील खारिज 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। For elaborate, detailed and latest provision 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.69/2022-23 dated 23.02.2023, 02/2023-24 dated 18.04.2023 and 03/2023-24 dated 20.04.2023 respectively 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 Numbers as shown in the tabulation below (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. Maxim Exports, 708, Mauryansh Elanza, Nr. Parekhs Hospital, Shyamal Cross Road, Satellite, Ahmedabad 380015** (hereinafter referred to as the '**Respondent**').

2. Briefly stated facts of the case is that the *Respondent* registered under GSTN No.24AKQPS8709Q1Z1 had filed refund claims as tabulated below for the period shown against for refund of ITC accumulated due to export of goods/services without payment of tax vide ARN Numbers as detailed in the tabulation.

TABLE-1



File No.	ARN No. & Dt	Order No. & Dt	Refund claimed/sanctioned	Refund admissible	Difference of duty under dispute
1	2	3	4	5	6
GAPPL/ADC/GSTD/80/2023-Appeal	AA2408220318285 09.08.2022	ZI.2408220361144 31.08.2022	3892136	3159684	732452
GAPPL/ADC/GSTD/157/2023-Appeal	AA240922049797 Q 16.09.2022	ZJ2410220214291 20.10.2022	1809789	1210662	599126
GAPPL/ADC/GSTD/156/2023-Appeal	AA2410220480223 14.10.2022	ZI.2410220266968 26.10.2022	1936389	1516660	419729

TABLE-1A

Sr no	Period of refund	Turnover as per Invoice/FOB( Adjusted total turnover)	Turnover as per Statement 3	Net ITC	Review order No. & Dt	SCN No. date
7	8	9	10	11	12	
1	June 2022	193133795	156788375	3892136	69/2022-23 23.02.2023	--
2	July 2022	142709378	95465799	1809789	2/2023-24 18.04.2023	ZG24092203545 45 28.09.2022
3	August 2022	106989385	23190848	1936389	3/2023-24 20.04.2023	--

3. After verification, the *Adjudicating Authority* found the refund claim to be in order and accordingly, sanctioned the refund claimed as in col. 4 in respect of sr.no. 1 and 3 of the above tabulation above vide his impugned order dated 31.08.2022 and 26.10.2022 respectively. However, in respect of sr.no.2, the adjudicating authority found some discrepancies and issued SCN on 28.09.2022 (col.no.12). The

claimant had replied to the SCN on 12.10.2022 and accordingly, the *Adjudicating Authority* has sanctioned the refund amount as in col.4 to the claimant vide *impugned order* dated 20.10.2022.

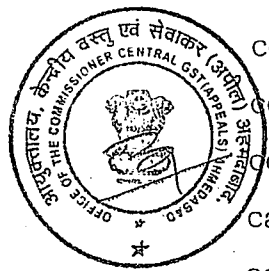
4. During review of said refund claim it was observed by the *Department/Appellant* that the respondent had filed claim on account of ITC accumulated due to export of goods/services without payment of Tax for the period as in col.7; and the said claim is sanctioned by the adjudicating authority vide respective orders as is in col. 3 of the table at para 2 above, in the form GST RFD 06. However, on going through the refund claim, it is noticed that the higher amount of refund has been sanctioned to the claimant than what is actually admissible to them in accordance with Rule 89(4) of the CGST Rules, 2017 read with Section 54(3) of the CGST Act, 2017.

5. Further, it was also noticed that the respondent had not uploaded all BRC's in respect of export of services with the refund claim as required as per para 48 of CircularNo.125/44/2019-GST dated 18.11.2019;

"48. It is clarified that the realization of consideration in convertible foreign exchange, or in Indian rupees wherever permitted by the Reserve Bank of India, 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 realization certifications (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."

6. During the course of post audit, the Assistant Commissioner, Dn.VIII has submitted copies of BRCs received from the claimant, on the face of the BRCs, the claimant has written the invoice number manually, however, amount has not tallied with the Statement-3(rule 89(2)(h)) submitted with refund claim.

6. Thus, in view of the above, the value of export of services as declared by the respondent ie., Rs.19,31,33,795/-, Rs. 14,27,09,378/- and Rs.10,69,89,385/ respectively, as the respondent had neither provided nor uploaded complete details of the BRCs/FIRCs of export of services and not provided statement to match the relevant BRC/FIRC with the corresponding invoices, as per para 48 of the Circular No.125/44/2019-GST dated 18.11.2019, the value of the export of services should

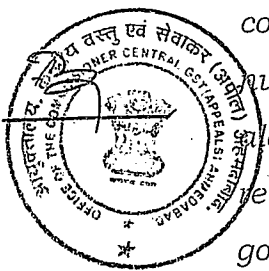


be deducted from the total FOB value for calculation of Turnover of zero rated supply of goods and services in the respective refund claims. Therefore, the turnover of zero rated supply of goods and services arrives to Rs. 15,67,88,375/- Rs. 9,54,65,799/- and Rs.2,31,90,848/- respectively.

7. Further, taking the lower value of goods/services exported, deducting the value of services and applying the formulae for refund of export of goods/services without payment of tax, the refund admissible comes to Rs. 31,59,684/-, Rs. 12,10,662/- and Rs. 1,51,66,60/- respectively. Thus, there has been excess refund sanctioned to the tune of Rs. 7,32,452/-, Rs.5,99,126/- and Rs. 4,19,729/- respectively in respect of all the three refund claims filed by the respondent.

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

- ❖ Para 48 of Circular No.125/44/2019-GST dated 18.11.2019 read with Rule 89(2) of the CGST Rules, clearly envisages that a statement containing the number and date of invoices and the relevant Bank Realization 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. Thus it is 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.
- ❖ The adjudicating authority has considered full value of turnover of zero rated supply which involves both the export of goods and export of services. The value of zero rated turnover of supply of goods is not clear and the adjudicating authority has not considered the lower value of the goods.
- ❖ The adjudicating authority has not considered the BRCs/FIRC with reference to the export of services in Statement-3[rule89(2)(h), total BRC received while granting the refund claim of ITC accumulated due to export of goods/services without payment of tax as required under CircularNo.125/44/2019-GST dated 18.11.2019.
- ❖ The impugned order passed by the adjudicating authority is not proper and legal in respect of the above facts and teheefore prayed for relief to set aside the impugned orders as detailed in col. 3 (Table at para 2) and to pass an order directing the adjudicating authority to demand and recover the amount erroneously excess paid to the tune of Rs. 7,32,452/-, Rs.5,99,126/- and Rs. 4,19,729/- respectively in respect of all the three refund claims filed by the respondent

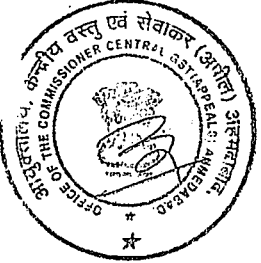


9. Personal hearing was held on 26.07.2023, whereby Mr. Ranjeet Gehlot, C.A. and authorized representative of the appellant appeared on behalf of them and reiterated the written submission submitted during personal hearing. He further submitted that they had claimed the refund of services for the FIRC received except 4 cases mentioned at S.No.11,12,18 & 19 of reply submitted during personal hearing. It is further submitted that in case of services exported, remittances received are not, one to one, but they have filed refund only for the cases of invoices where FIRC is received and the same may be verified.

- i. The respondent is engaged in export of goods and has opted to export the goods under LUT ie., without payment of tax;
- ii. That the respondent had issued some separate invoices during the period for Freight in case of FB contracts and they had provided BRC/Inward Remittance advice while filing the refund application;
- iii. That merely on the reason that the BRC and FIRC does not contain the invoice number, it has been concluded that the respondent had not received it on presumptions, surmises and conjecture drawn;
- iv. That the respondent has drawn attention to para 48 of the circular No.125/44/2019-GST dated 18.11.2019:

"48. It is clarified that the realization of consideration in convertible foreign exchange, or in Indian rupees wherever permitted by Reserve Bank of India, 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 Realization 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."

10. The export of services made by them were disclosed in the GSTR-1 and duly recorded in the statement RFD-01A filed along with their refund claim. They had furnished details of the invoices during the period June'2022, July'2022 and August'2022 and submitted copy of the BRCs/FIRCs received for the export along with their bank statements and reconciliation before the appellate authority.



## DISCUSSIONS AND FINDINGS

11. I have carefully gone through the facts of the case and grounds of appeal made by the Reviewing Authority, and the submissions made by the respondent at the time of personal hearing and documents available on record. The limited point to be decided in the matter is whether the partial rejection of refund claims for non receipt of BRC/FIRC, duly reviewed in the departmental appeal is proper or otherwise.

13. I find that in the present case appeal is filed by the department against impugned order wherein refund of accumulated ITC due to export without payment of tax amounting to Rs. 31,59,684/-, Rs. 12,10,662/- and Rs. 1,51,66,60/- respectively has been sanctioned by the adjudicating authority. The Reviewing Authority had reviewed these three refund claims as tabulated in para 2 above, and departmental appeal has been filed claiming that there has been excess refund sanctioned to the tune of Rs. 7,32,452/-, Rs.5,99,126/- and Rs. 4,19,729/- respectively in respect of all the three refund claims filed by the respondent. The grounds on which the departmental appeal has been filed is that the adjudicating authority has considered the higher value of the turnover of zero rated supply of export of goods / export of services, as in col. 8 of table in para 2, for sanctioning the three refund claims and the respondent had neither provided the complete details of BRCs/FIRC nor uploaded the relevant BRCs/FIRC as required under Rule 89(2) along with the refund claims in respect of some of the invoices for the relevant period.

14. The appellant in the present appeals mainly contended that the uploaded value of zero rated turnover of export as in col.8 of the table above is higher than the value shown in the Statement-3 where BRC/FIRCs have been received as in col.9. The adjudicating authority has considered the value of zero rated turnover of higher value instead of lower value as required on the basis of the formulae envisaged in Rule 89 (4) read with CBIC Circular NO.147/03/2021-GST dated 12-3-2021.

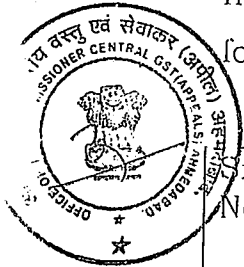
*As per para 4 of the aforementioned circular the manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules, 2017.*

*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"*

15. 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.

16. I find in the instant case, the respondent has received the BRCs/FIRCs in respect of the export of goods and services. However, in some invoices the BRC/FIRCs has neither received nor short received. During personal hearing, this has been agreed by the respondent. I find that the respondent in respect of the following suppliers could not produce copy of the FIRCs,BRCs etc.



No	Month	Invoice No.	Name of the party	Value of export services USD	Amount Recd in USD	Short received not received USD
1	June	FI-48 21.06.2022	GESR AL Amin Trading	7300	4800	2500
2	August	FI-77 & FI-82 02.08.2022 10.08.2022	St Alice Alice Trading	69750	25532	44218
3	July	FI-70 21.07.2022	General DU Commerce Import Export SARL	8200	5997	2203
4	June	FI-40 13.06.2022	Bright Side Enterprise	5900	0	5900
5	August	FI-79 05.08.2022	Nishitha Investment Ltd.	5700	0	5700
			Total	96850	36329	60521

In the written submissions made by the respondent, they clearly mentioned that they have either short received or not received payment from these suppliers. Though the respondent furnished copies of invoices it could not be correlated in the absence of FIRCs/BRCs.

17. Another point of the Review Order, which requires to be discussed here, is that in the BRC/FIRCs submitted by the respondent, the invoice numbers were manually written at the time of claiming refund. The respondent could not provide proper justification in this aspect.

18. In view of the above facts and discussions, the respondent has not complied with CBIC Circular No. 37/11/2018-GST and 125/44/2019-GST dated 18.11.2019 in filing their refund claim. Therefore, I allow departmental appeal and direct the Adjudicating Authority to re-verify the refund claim as directed above and recover the erroneous amount of refund along with interest due thereon.

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

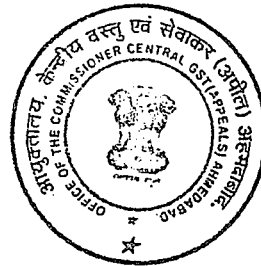
The appeal filed by the appellant stands disposed of in above terms.

*Asanup*  
29/09/2023  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)

Date: .09.2023

// Attested //

*Vijayalakshmi V*  
(Vijayalakshmi V)  
Superintendent (Appeals)  
Central Tax  
Ahmedabad.



By RPAD

To,  
M/s. Maxim Exports  
708, Mauryansh Elanza  
Shyamal Cross Road, Satellite  
Ahmedabad-380015

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division VIII, Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

