

## 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- 20231064SW000011691C

रजिस्टर्ड डाक ए.डी. द्वारा

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फाइल संख्या : File No : GAPPL/ADC/GSTD/210/2023 -APPEAL / ३६९९ - ६५

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-135/2023-24**

दिनांक Date : **19.10.2023** जारी करने की तारीख Date of Issue : **26.10.2023**

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

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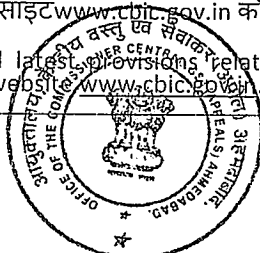
Arising out of Order-in-Original No. **ZL2411220149403** dated **15.11.2022** issued by The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South

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

Appellant	Respondent
The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South	M/s 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 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। 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> .

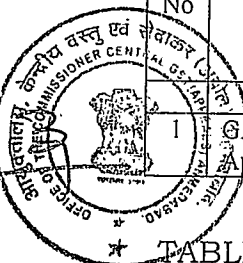


**ORDER IN APPEAL**

The Assistant Commissioner, CGST, Division-VIII Ahmedabad South (hereinafter referred to as the '**Appellant/Department**') in terms of Review Order No.17/2023-24 dated 11.05.2023 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 Number 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(i).** 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



SR No	File No.	ARN No. & Dt	Order No. & Dt	Refund claimed/sanctioned	Refund admissible	Difference of duty under dispute
1	GAPPL/ADC/GSTD/210/2023-Appeal	AA2411220144702 05.07.2022	ZL2411220149403 15.11.2022	950551	932497	18053

★ TABLE-1A

Sr no	Period of refund	Turnover as per Invoice/FOB(Adjusted turnover)	Turnover as per Statement 3	Net ITC	Review order No. & Dt
	7	8	9	10	11
1	September 2022	30059014	29488109	950551	17/2023-24 dated 11.05.2023

**2(ii).** After verification, the *Adjudicating Authority* found the refund claim to be in order and accordingly, sanctioned the refund claimed as in col. 4 of the above tabulation above vide his impugned order dated 15.11.2022. 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 order 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.

2(iii). Further, it was also noticed that the respondent had not uploaded all BRC/FIRCs, and that, the amount of BIRC/FIRC uploaded by the appellant does not tally 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 of 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."*

3. The appellant further submits the reconciliation for the export of goods and service for the period September 2022, wherein the total export of goods and services without payment of tax (i.e. under LUT) is as under:

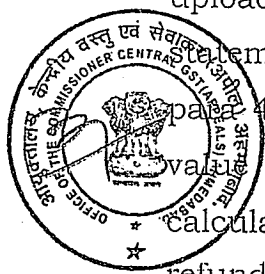
Particular	Export of Goods	Export of Services	Total Export of Goods and Services
September 2022	2,94,88,109	5,70,905	3,00,59,014

Thus, in view of the above, the value of export of services as declared by the respondent i.e., Rs.5,70,905/-, 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. Accordingly, 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 adjusted total turnover arrives to Rs. 3,00,59,014/- and the turnover of zero rated supply of goods and services arrives to Rs. 2,94,88,109/-.

4. Further, taking the lower value of goods and services exported, deducting the value of services and applying the formulae for refund of export of goods and services without payment of tax, the refund admissible comes to Rs. 9,32,497/- as against Rs. 9,50,551/-. Thus, there has been excess refund sanctioned to the tune of Rs. 18,053/- in respect of refund claim filed by the respondent.

5. 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 therefore 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. 18,053/- in respect of refund claim filed by the respondent.



#### **Personal Hearing:**

Personal hearing was fixed/held on 15.09.2023, 29.09.2023 and 16.10.2023, whereby Mr. Ranjeet Gehlot, C.A. and authorized representative of the appellant appeared on behalf of them and submitted cross objection during personal hearing. He further submitted that the issue is already clarified by GST Counsel and Circular No. 197 GST dated 17.07.2023 issued by CBIC. In view of above it is requested to reject the departmental appeal in both the cases. The appellant in their written submission dated 16.10.2023 stated that:

- 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."

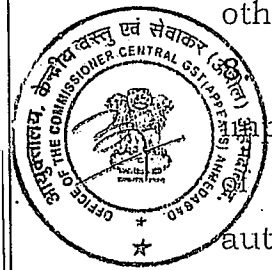
v. The export of services made by them were disclosed in the GSTR-1 and duly recorded in the statement RFD-01A filed along with their refund claim. They had furnished details of the invoices during the period September'2022 and submitted copy of the BRCs/FIRCs received for the export along with their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

#### **DISCUSSIONS AND FINDINGS**

7. 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.

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 tax amounting to Rs. 9,50,551/- has been sanctioned by the adjudicating authority. The Reviewing Authority had reviewed the refund claim 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. 18,053/- in respect of refund claim 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 and services, as in col. 8 of table in para 2, for sanctioning refund claim and the respondent had neither provided the complete details of BRCs/FIRC nor uploaded the relevant BRCs/FIRC as required under Rule 89(2)(c) along with the refund claims in respect of some of the invoices for the relevant period.

9. The appellant/department 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"

**10.** 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 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.



I find in the instant case, the respondent during filing appeal has submitted the copy of BRCs/FIRCs in respect of the export of goods and services in this office. The details are as under:

Sr. No.	Month	Invoice No.	Name of the party	Value of export services/ goods in Rs.
1	September	FI-88 13.09.2022	GESR AL Amin Trading	2,18,629
2	September	FI-89 22.09.2022	Durrat Jeddah Trading Co.	3,52,276

In the written submissions made by the respondent and after furnished copies of invoices it could not be correlated in with FIRCs/BRCs with the copy of invoices. 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 which cannot be relied upon. In this regard, the respondent could not provide proper justification in this aspect.

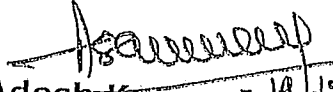
**12.** The respondent in the present appeal has referred Circular No. 197/09/2023 dated 17.07.2023. In this regard I find that in the instant case the respondent had not provided complete details of BRCs/FIRCs against the invoices of export of services, as required as per para 48 of Circular No 125/44/2019-GST

dated 18.11.2019. The respondent has not uploaded all the BIRCs/FIRCs during the time of refund claim and that the amount of FIRCs/BRCs is not matched with the value of services shown against the respective invoices. Further, it is also not clear, whether the BRCs/FIRCs provided by the respondent belongs to the export of services or the export of goods, therefore the value of export of services is required to be deducted from the total FOB value for calculation of Turnover of zero rated supply in this refund claim. Accordingly, Turnover of zero rated supply comes to the tune of Rs. 2,94,88,109/-(value of goods only) instead of Rs. 3,00,59,014/-. Hence, considering the lower value among FOB value and invoice value of goods exported, deducting the value of services from zero rate supply and applying the formulae for refund of export of goods/services without payment of tax, refund admissible comes to Rs. 9,32,497 instead of Rs. 9,50,551/- which is sanctioned by the sanctioning authority. Thus, there is excess sanction of refund of Rs. 18,053/- to the respondent which is required to be recovered along with interest.

13. 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 recover the erroneous amount of refund along with interest due thereon.

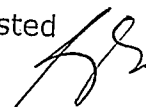
अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)

Date: 19.10.2023

Attested

  
(Sandheer Kumar)  
Superintendent (Appeals)  
CGST, 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.

