

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: 20231064SW000000E7C4

रजिस्टर्ड डाक ए.डी. द्वारा

फाइल संख्या : File No : GAPPL/ADC/GSTD/293/2023 -APPEAL 1965 - 70

अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-136/2023-24

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)

Arising out of Order-in-Original No. ZH2401230270415 dated 22.01.2023 issued by The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South

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) 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 दाखिल 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

The Assistant Commissioner, CGST, Division-VIII Ahmedabad South (hereinafter referred to as the '**Appellant/Department**') in terms of Review Order No. 27/2023-24 dated 13.07.2023 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	2	3	4	5	6
1	GAPPL/ADC/GSTD/293/2023-Appeal	AA241222055496D 17.11.2022	ZH2401230270415 22.01.2023	1539019	1529940	9078

TABLE-1A

No.	Period of refund	Turnover as per Invoice/FOB(Adjusted total turnover)	Turnover as per Statement 3	Net ITC	Review order No. & Dt
	7	8	9	10	11
1	October 2022	98210596	73633741	2040591	27/2023-24 dated 13.07.2023

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 22.01.2023. 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). The reconciliation for the export of goods and service for the period October 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 Serv (invoice No. FI/90)	Total Export of Goods and Services
October 2022	9,80,00,776	2,09,820	9,82,10,596

Further, it is found that the turnover of zero rated supply of goods & services has been considered as Rs.7,40,70,695/- by the adjudicating authority. Further, it is noticed that while considering the turnover of zero rated supply, the adjudicating authority has wrongly considered the higher value among the GST invoice value and the FOB value w.r.t invoice no MA/SA/354 i.e. Rs 29,82,442/-, in place of Rs 27,01,308/-. The GST invoice value of the goods mentioned in the invoice no MA/SA/354 is found to be Rs 27,01,308/- which is the correct value for considering turnover of zero rated supply.

The value of export of services as declared by the respondent i.e., Rs.2,09,820/-, 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 and considering the lesser value declared between tax invoice and bill of supply for invoice no MA/SA/354 dated 18.10.2022 as Rs 27,01,308/-, the turnover of Zero rated supply comes to the tune of RS.7,36,33741/- instead of Rs. 7,40,70695/- considered by the adjudicating authority. Thus, taking the lower value of goods among FOB value and invoice value, deducting the value of export of services from Zero rated supply and applying the formulae for refund of export of goods/services without payment of tax, the refund admissible comes to Rs. 15,29,940/- instead of Rs. 15,39,019/- sanctioned by the sanctioning authority.

3. 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.

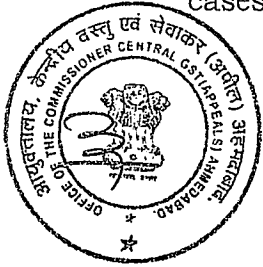
- ❖ The adjudicating authority has not considered the BRCs/FIRC with reference to the export of services in Statement-3[rule89(2)(h), total BRC received while granting the refund claim of ITC accumulated due to export of goods/services without payment of tax as required under CircularNo.125/44/2019-GST 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. 9,078/- in respect of refund claim filed by the respondent.

Personal Hearing:

4. 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 October'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.

8. 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. 15,39,019/- 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. 9,078/- 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 full value of turnover of zero rated supply, which includes both the export of goods and the export of services.

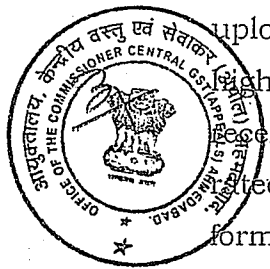
9. The appellant/department in the present appeals mainly contended that the uploaded value of zero rated turnover of export as in col.8 of the table above is higher than the value shown in the Statement-3 where BRC/FIRCs have been received as in col.9. The adjudicating authority has considered the value 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.

11. 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.	Remarks
1	Oct	FI-90 13.10.2022	GESR AL Amin Trading	209820	
2	Oct	MA/SA/354 08.10.2022		27,01,308	Bill not produced by the respondent.

In the written submissions made by the respondent and after furnished copy of invoice 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 number was 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. Further I find that the adjudicating authority have failed to check the lower of the value of the goods declared in the GST invoice and the value in the corresponding shipping bill/bill of export while calculating the eligible amount of refund in respect of invoice no MA/SA/354 dated 18.10.2022. Further, the adjudicating authority has also failed to check the BRCs/FIRCs w.r.t the export of services in Statement-3[rule 89(2)(c)], while granting the refund claim of ITC accumulated due to export of goods/services without payment of tax as required under Circular No. 125/44/2019-GST dated 18.11.2019; which has resulted in excess sanction of refund of RS. 9,078/- to the respondent.

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 invoice 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 I find that the adjudicating authority has wrongly considered the higher value among the GST

