



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- 20231264SW00001681F8

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTD/336/2023 -APPEAL 19228 -32

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 168 /2023-24

दिनांक Date : 29.11.2023 जारी करने की तारीख Date of Issue : 06.12.2023

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. ZL2401230332448 dt. 26.01.2023 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, CGST, Division VII, Ahmedabad South	M/s Faith Industries Limited, 701, Shapath 1, Opp Rajpath Club, S G highway, Gujarat - 380015

- (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 VII, Ahmedabad South (hereinafter referred to as the '**Appellant/Department**') in terms of Review Order No. 28/2023-24 dated 19.07.2023, issued under Section 107 of the CGST Act, 2017, has filed the present appeals in terms of Advisory No.9/2020 dated 24.09.2020 issued by the Additional Director General (Systems), Bengaluru. The respondent had filed refund claim of Rs. 60,00,000/- on account of ITC accumulated due to export of goods/services without payment of tax for the month of August 2022, vide ARN No. AA2412220774400 dated 21.12.2022 under Section 54(3) of the CGST Act, 2017. The appeal is filed against Orders No. ZL2401230332448 dated 26.01.2023 (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 refunds to M/s. Faith Industries Limited, 701, Shapath 1, Opposite Rajpath Club, S. G. Highway, Ahmedabad - 380 015 (hereinafter referred to as the '**Respondent**').



(i). Briefly stated the fact of the case is that the *Respondent* registered under GSTN No. 24AAACF2967J1ZK had filed refund claim of ITC accumulated due to export of goods/services without payment of tax. The details are as under:

ARN No. and Date	Period of Refund claim	Amount of Refund claim
AA2412220774400 dated 21.12.2022	August 2022	Rs.60,00,000/-

After verification of aforementioned refund claim, the *Adjudicating Authority* found the claim in order and accordingly has sanctioned the refund claims of Rs.60,00,000/- vide impugned order.

2(ii). During review of said refund claim it was observed by the Department/Appellant that the the turnover of zero rated supply of goods & services has been considered as Rs.3,08,30,124/- by the adjudicating authority which is the invoice value of goods declared in the GST returns. However it is found that the adjudicating authority has wrongly considered the higher value between the GST invoice value and the FOB value while considering the turnover of zero rated supply. The FOB value of zero rated supply of goods & services is found to be Rs 2,89,30,724/- which is lesser than the GST invoice value i.e. Rs 3,08,30,124/- Therefore, the correct value for considering turnover of zero rated supply should be the FOB value i.e Rs

2,89,30,724/- in place of Rs 3,08,30,124/- considered by the adjudicating authority. Further it is noticed that the amount of Net ITC claimed by the applicant is Rs 1,61,14,478/ as against the ITC available in their GSTR 2A of Rs 97,54,203/- for the said period in terms of Section 16(2)(aa) of CGST Act, 2017 read with Rule 36(4) of CGST Rules 2017. Thus, there is excess sanction of Refund of Rs. 22,97,049/- to the claimant which is required to be recovered along with interest.

Calculation Sheet as per FORM-GST-RFD-01

Period of Refund claim	Turnover of Zero rated supply (1)	Adjusted Total Turnover of supply as per returns (2)	Net ITC (3)	Refund Amount Sanctioned (4)	Refund Amount Admissible (5) (1*3/2)
August'22	3,08,30,124	7,62,08,447	1,61,00,010	60,00,000	65,13,258

Calculation sheet submitted by the review authority (Form-GST-APL-03):

Period of Refund claim	Turnover of Zero rated supply (1)	Adjusted Total Turnover of supply as per returns (2)	Net ITC (3)	Refund Amount Sanctioned (4)	Refund Amount Admissible (5)	Excess Refund amount Sanctioned (6)
August'22	2,89,30,724	7,62,08,447	97,54,203	60,00,000	37,02,951	22,97,049

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

that the Adjudicating Authority has considered higher value declared in GST returns for calculating the turnover of Zero rated supply of goods and services in place of the FOB value, which is the lower one and should have been considered as turnover of Zero rated supply during the process of sanctioning the refund claim. In terms of sub rule (4) of Rule 89 as amended by Notification no 14/2022 Central Tax dated 05.07 2022- and further as per Para 48 of Circular No. 125/44/2019-GST dated 18.11.2019- GST, also the adjudicating authority should have examined the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export (FOB) during the processing of the refund claim and the lower of the two values should have been taken into account while calculating the eligible amount of refund;

- In the instant case "Net ITC means the input tax credit availed on inputs and input services during the month of August 2022 which is wrongly claimed as Rs 1,61,14,478/- in place of correct amount of Rs 97,54,203/-;

- turnover of zero rated supply amounted to Rs 2,89,30,724/- instead of Rs. 3,08,30,124/- and Net ITC comes to Rs 97,54,203/- in place of Rs 1,61,14,478/- Hence, considering the lower value among FOB value and invoice value of goods exported and taking the correct value of Net available ITC the refund admissible comes to Rs 37,02,951/- instead of Rs. 60,00,000/- sanctioned by the sanctioning authority. Therefore there is excess sanction of refund of Rs 22,97,048/ to the claimant which is required to be recovered along with interest;

Calculation sheet submitted by the review authority (Form-GST-APL-03):

Period of Refund claim	Turnover of Zero rated supply (1)	Adjusted Total Turnover of supply as per returns (2)	Net ITC (3)	Refund Amount Sanctioned (4)	Refund Amount Admissible (5)	Excess Refund amount Sanctioned (6)
August 2022	2,89,30,724	7,62,08,447	97,54,203	60,00,000	37,02,951	22,97,049

the following guidelines governing the refund on export of goods & services are relevant:-

- (i). The provision of Para 47 of Circular No.125/44/2019-GST dated 18.11.2019:
- (ii). Para 8 of Notification Io.14/2022 Central Tax dated 05.07.2022
- (iii) Section 16(2) (aa) of CGST Act, 2017 read with Rule 36(4) of CGST Rules, 2017 Section 16 (2).
- (iv) Sub-rule (4) of Rule 89 of the CGST Rules 2017

- the adjudicating authority appeared to have failed to consider the lower of the value of the goods declared in the GST invoice and the value in the corresponding shipping bill/bill of export for calculating the eligible amount of refund. Further the adjudicating authority has also failed to check the Net ITC which has resulted in excess sanction of refund of Rs. 22,97,049/- to the claimant.

Personal hearing:

4. Personal hearing in the present matter was held on dated 26.10.2023, wherein Mr. Tanay Nitesh Shah, Advocate and Mr. Punvant Pukhraj Shat, Manager appeared on behalf of the *Respondent* as authorized representatives. During PH he has submitted additional submissions. They further submitted that they have filed the refund claim correctly as per CBIC Notification 40/2021 dated 29.12.2021 on the basis of GSTR-2B. In view of above they have requested to reject the departmental appeal.

5. **Accordingly, in response to present appeal the Respondent has submitted Cross Objections and contended that:**

- That the figure for the zero rated supply of goods and service mentioned is Rs. 3,08,30,124/- but we have considered the refund on the basis of FOB value which is Rs. 2,89,30,724/-. Further the value of FOB was also considered in Adjusted Total Turnover;

- that the ITC available in their GSTR-2A is 97,54,203/- for the month of August 2022 which is inaccurate as we have considered ITC available on the basis of GSTR 2B which comes to Rs. 1,61,14,478/-. We have also uploaded Annexure-A and Annexure-B as supporting documents which has detailed purchases along with dates and amount.

- that the ITC available in GSTR-2B is comparatively higher than in GSTR-2A and the reason for the same is that many suppliers has filed their GSTR-1 lately so there ITC for the previous months was reflected in the GSTR-2B for the month of August 2022;

- the CBIC has issued the notification No. 40/2021-CT dated 29.12.2021 and according to the notification no ITC shall be availed unless the details of such invoices or debit notes have been communicated to the registered person in Form GSTR-2B under rule 60(7). In the present matter the refund claim pertains to ITC taken in record with GSTR-2B. Notification No. 40/2021;

- As per rule 89(4) of the CGST Rules 2017 in the case of zero-rated supply of goods or services or both without payment of tax under letter of undertaking in accordance with the provisions of section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula-

Period of Refund	Turnover of Zero	Adjusted Total	Net ITC (3)	Refund Amount	Refund Amount
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claim	rated supply (1)	Turnover of supply as per returns (2)		Sanctioned (4)	Admissible (5) (1*3/2)
August'22	2,89,30,724	7,62,08,447	1,61,00,010	60,00,000	61,11,985

- Amount eligible for refund was Rs. 61,17,478/- considering the value of FOB as the Turnover of zero rated supply of goods and taking into consideration ITC as per GSTR-2B;

-refund claimed was Rs. 60,00,000/- which was less than the maximum refund which can be claimed;

In view of above submissions, the *Respondent* has made prayer to set aside the appeal filed by the department/ appellant.

Discussion and Findings:

6. I have carefully gone through the facts of the case, grounds of appeals, submissions made by the *Respondent* and documents available on record. It is observed 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 60,00,000/- was sanctioned. The *appellant/department* in the present appeal mainly contended that the turnover of zero rated supply of goods & services has been considered as Rs.3,08,30,124/- by the adjudicating authority which is the invoice value of goods declared in the GST returns and amount of Net ITC claimed by the applicant is Rs 1,61,14,478/ as against the ITC available in their GSTR 2A of Rs 97,54,203/- for the said period in terms of Section 16(2)(aa) of CGST Act, 2017 read with Rule 36(4) of CGST Rules 2017. Thus, there is excess sanction of Refund of Rs. 22,97,049/- to the claimant which is required to be recovered along with interest.

7. Further, 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 Doubts have been raised as to whether the restriction on turnover of zero-rated supply of goods to 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, imposed by amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-

Central Tax dated 23.03.2020, would also apply for computation of "Adjusted Total Turnover" in the formula given under Rule 89 (4) of CGST Rules, 2017 for calculation of admissible refund amount.

4.2 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:

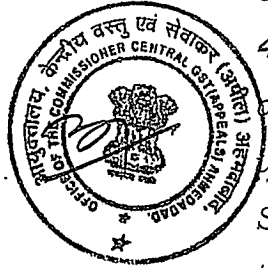
"Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover"

4.3 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 i.e. value of export taken towards turnover of zero rated supply of goods need to be taken as value of zero rated supply of goods in adjusted total turnover in the formula. In other words, in cases where there is only zero rated supply of goods, turnover value of zero rated supply of goods at numerator and turnover value of zero rated supply in total adjusted total turnover at denominator will be same.



8. As per definition of ‘adjusted total turnover’ defined in clause (E) of sub-rule (4) of Rule 89, 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. Accordingly, in the formula prescribed under Rule 89 (4) of CGST Rules the value of zero rated turnover of goods i.e. value of export comes at numerator as well as in total adjusted turnover at denominator. In the present appeal, the department/appellant and respondent have taken total adjusted turnover of Rs. 7,62,08,447/-. Further during the filing appeal (APL-01) and during the course of personal hearing the department has stated that they have taken turnover the value of zero rated supply of goods and service as per FOB value i.e. Rs. 2,89,30,724/-. So the main issue to be decided in the instant case is of Net ITC claimed by the respondent is Rs 1,61,14,478/- (as per GSTR-2B) as against the ITC available in their GSTR 2A of Rs 97,54,203/- for the said period in terms of Section 16(2)(aa) of CGST Act, 2017 read with Rule 36(4) of CGST Rules 2017.

9. 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 invoice value for the Zero rated Turnover in the RFD-01, however during the filing appeal (APL-01) and during the course of personal hearing the department has stated that they have considered the refund on the basis of FOB value which is Rs. 2,89,30,724/-. Further the value of FOB was also considered in Adjusted Total Turnover. As per department or as per respondent total adjusted turnover is Rs. 7,62,80,447/-

Further the respondent while filing the appeals and during personal hearing has stated that the ITC available in their GSTR-2A is Rs. 1,54,203/- for the month of August 2022 which is inaccurate as they have considered ITC available on the basis of GSTR 2B which comes to Rs. 1,61,14,478/-. The respondent further stated that they have also uploaded Annexure-A and Annexure-B as supporting documents which has detailed purchases along with dates and amount. They further stated that the ITC available in GSTR-2B is comparatively higher than in GSTR-2A and the reason for the same is that many suppliers has filed their GSTR-1 lately so there ITC for the previous months was reflected in the GSTR-2B for the month of August 2022.

12(i). In view of the above, the notification No. 40/2021-CT dated 29.12.2021 issued by CBIC is produced below:

2. In the Central Goods and Services Tax Rules, 2017,—(i) in rule 36, for sub-rule (4), the following sub-rule shall be substituted, with effect from the 1st day of January, 2022, namely: —

(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless, - (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and (b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule(7) of rule 60.

12(ii). In the present matter it is observed that the respondent has taken ITC as per GSTR-2B for calculating the refund claim. However, the department/appellant has considered Net Input Tax Credit as per GSTR-2A. Because of that, there is difference of sanction of Refund of Rs. 22,97,049/-.

13. In view of above facts of the case, submissions made by Respondent and discussion made herein above, it is observed that the adjudicating authority has rightly considered the net input tax credit of Rs. 1,61,00,010/-. However while filing RFD-01 respondent has wrongly taken turnover of zero rated supply of goods and services of Rs.3,0830,124/- i.e invoice value in place of FOB value i.e. Rs. 2,89,30,724/-. However, taking turnover of zero rated supply of goods and services of Rs 2,89,30,724/- i.e FOB value, the admissible refund amount comes to Rs. 61,11,985/- which was more than the sanctioned refund of Rs. 60,00,000/-.

Considering the above facts the revised Calculation sheet is as under:-

Period of Refund claim	Turnover of Zero rated supply (1)	Adjusted Total Turnover of supply as per returns (2)	Net ITC (3)	Refund Amount Sanctioned (4)	Refund Amount Admissible (5)
August'22	2,89,30,724	7,62,08,447	1,61,00,010	60,00,000	61,11,985

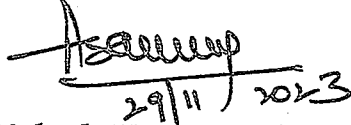
Further, it is observed that in respect of the value of adjusted total turnover both appellant/department and respondent have not raised any issue.

11. In view of above, I do not find any merit or legality in the present appeal filed by the *appellant/department* to set aside the impugned order and order for recovery of erroneous/excess refund

22,97,049/- sanctioned to the *Respondent* on the grounds mentioned in appeals. Accordingly, I upheld the *impugned order* and reject the appeal filed by the *appellant/department*.

अपीलकर्ताद्वारा दर्ज की गई अपीलकानिपटाराउपरोक्ततरीकेसेकियाजाताहै।

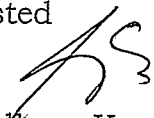
The appeals filed by the *appellant/department* stands disposed of in above terms.


29/11/2023
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 29.11.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)



By R.P.A.D.

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

Appellant/Department

M/s. Faith Industries Limited,
701, Shapath 1, Opposite Rajpath Club,
S. G. Highway, Ahmedabad - 380 015

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/Assistant Commissioner, CGST, Division-VII, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File.

