



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20231264SW000000B189

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2943/2023 -APPEAL /9250-55

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 171 /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

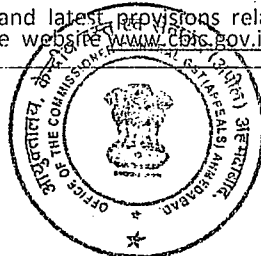
Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. ZG2405230302831 DT. 19.05.2023 issued by The Assistant Commissioner, CGST Div-VII, Ahmedabad South

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

Appellant	Respondent
M/s. Jindal Worldwide Limited, Jindal Corporate House, Opp. Dmart, IOC Petrol Pump Lane, Sivranjani Shyamal 132 Ft Ring Road, Satellite, Ahmedabad Gujarat 380015	The Assistant Commissioner, CGST Div-VII, Ahmedabad South

(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 ट्यापक, 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 .

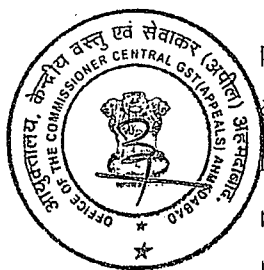


ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Jindal Worldwide Limited, Jindal Corporate HOU, Opp.DMart, I.O.C. Petrol Pump Lane, Shivranjani Shyamal 132 Ft Ring Road, Satellite, Ahmedabad, Gujarat 380 015(hereinafter referred as 'Appellant') has filed the present appeal against Order No. ZG2405230302831 dated 19.05.2023 passed in the Form-GST-RFD-06 (hereinafter referred as 'impugned order') rejecting refund claim of Rs.21,11,909/-, issued by the Assistant Commissioner, CGST & C. Ex., Division - VII, Ahmedabad South(hereinafter referred as 'adjudicating authority').

2. Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No.24AAACJ3816G1ZX has filed the present appeal on 20.07.2023. The 'Appellant' is engaged in multiple business activities namely, spinning, weaving and finishing of textile products for which the appellant consumes raw materials such as cotton, yarn, textile, chemicals, fibres etc. The major output attracts a GST rate of 5% against which the inputs are purchased at various rates including 12%, 18% and even 28%. The appellant carries out trading of goods like the excess purchases of raw materials are sold in the open market. Accordingly, the 'Appellant' had filed refund application for refund of Rs.97,11,009/- on 27.04.2023 for the period May'2021 on account of "Refund of ITC accumulated due to inverted tax structure". In response to said refund claim a show cause notice dated 09.05.2023 was issued to the 'Appellant'. In the said SCN it was mentioned in remarks that "As per GSTR-1 of the relevant period, the turnover of inverted supply is Rs.1,10,25,12,885/- and the tax payable thereon comes to Rs.5,70,98,295/-. Therefore, admissible refund comes to Rs.75,99,100/-" hence the appellant was called for reasons to explain the variation in the refund amount claimed.

3. Further, the 'Appellant' was asked to furnish reply to the SCN within 15 days from the date of service of SCN and a personal hearing was also offered to the 'Appellant' on 12.05.2023 at 11.30 hrs. Thereafter, the adjudicating authority has rejected the part of the refund claim AND SANCTIONED ONLY Rs.75,99,100/- and rejected Rs.21,11,909/- on the following grounds vide impugned order.



(i) The calculation given by the claimant in respect of refund claim of accumulated ITC in respect of inverted rate supplies, adjusted aggregate turnover is incorrect;

(ii) The refund has been restricted to the ITC as per those invoices, details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in FORM GSTR2A of the applicant in terms of Circular No.135/05/2020-GST dated 31.03.2020;

(iii) The claimant vide their reply dated 16.05.2023 has attached trading sales ledger however besides the trading sales ledger, the claimant has neither submitted any clarification regarding the objection raised in the SCN nor submitted any satisfactory evidence to clarify the difference mentioned in the SCN.

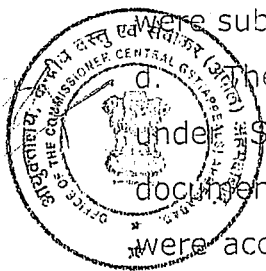
4. Being aggrieved with the "impugned order" the 'Appellant' has filed the present appeal on 20.07.2023 wherein stated that -

a. The adjudicating authority has violated the principles of natural justice by issuing the refund order without providing the appellant with a valid opportunity of being heard;

b. The authority did not provide any calculation or methodology used by them to arrive at the figures mentioned in the SCN. The lack of transparency raises concerns about the justification behind the decision made by him.

c. the adjudicating authority has not considered the reply filed by the appellant. Due to technical glitch the reply filed in the portal was not visible to the proper officer, and a copy of the reply to SCN along with annexures were submitted to the adjudicating authority on 19.05.2023.

d. The adjudicating authority has contravened the provision stipulated under Section 54 and related rules while rejecting the refund; the documents submitted with RFD-01 as per rule 89(4) of CGST Rules, 2017 were accepted by the Asst. Commissioner; but he has considered the total turnover as per the sales register except the export sales and sales done at the 18% tax rate. The only reason for exclusion of sales made at 18% was that the highest rate of inward supply was at 18% and therefore all the sales at or above 18% are excluded from inverted rated turnover. The subject issue was explained to the Asst. Commnr. That the rationale behind not considering the turnover arising from trading sales in the inverted rated turnover in reply filed against the SCN, which has not been considered by the adjudicating authority.



e. As the appellant engaged in trading activity, the input and output products remain the same having the same rate of tax and therefore there arises no accumulation of ITC on account of inverted duty structure. Therefore, the turnover arising from trading activity irrespective of rate of tax, may it be at 5%, 12% or 18% in inverted rated turnover is explained in the table below;

Particulars	Domestic Turnover			Export Turnover		Total Turnover (F) (A+B+C+D+E)	Tax Payable on (F)
	5%(A)	12%(B)	18%(C)	5%(D)	12%(E)		
Non-inverted rate turnover (Trading sale including zero rated sales)	243251432	101407184	3674016	423041514	1072567	772446714	4613704
IDS Turnover	757854267	-	-	-	-	757854267	3789271
Total	1001105699	101407184	3674016	423041514	1072567	1530300980	8407976

f. The appellant has relied upon CBIC Circular No.135/05/2020-GST dated 31.03.2020 wherein para 3.2 it is stated that "It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of Section 54 of the CGST Act, 2017 would not be applicable in cases where the input and the output supplies are the same.

g. Vide circular no.173/05/2022-GST dated 06.07.2022, sort of corrigendum in nature to circular mentioned at para f. Above has allowed the refund for same goods only when there is accumulation due to "rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification. In the instant case since there was no supply under concessional notification the same is not applicable. The adjudicating authority has completely overlooked the provision prescribed under the legislature for the refund to be claimed under inverted rated turnover by considering turnover of all supplies except the highest rated and export supply in inverted rated turnover. The interpretation of the adjudicating authority that the turnover of inverted rated supply of goods and services will be the same as declared in GSTR-1/GSTR-3B returns, excluding the highest rated supply and zero rated supplies, is in contradiction to the plain language of the statute and therefore not a constructive interpretation.

h. With the above grounds of appeal, the appellant has prayed to quash the impugned order and allow appeal of the appellant.



Personal Hearing :

5. Personal Hearing in the matter was held on 25.10.2023 wherein Mr. Kunal Agrawal, C.A. appeared on behalf of the appellant as authorized representative. During PH he reiterated the written submissions/grounds of appeal filed by them.

DISCUSSION AND FINDINGS:

6. I have carefully gone through the facts of the case, grounds of appeal, made by the and documents available on record. I find that the *appellant* has filed the refund application of accumulated ITC due to Inverted Tax Structure amounting to Rs.97,11,009/- for the period from May'2021 on 27.04.2023. The *adjudicating authority* has sanctioned the partial amount of said refund claim to Rs.75,99,100/- and rejected Rs. 21,11,909/- vide *impugned order*. By referring the provisions of Section 54(3) of the CGST Act, 2017, the *appellant* in the present appeal has mainly contended that without considering their reply to the show cause notice and without any transparency of the admissible refund arrived at, the adjudicating authority has rejected the part refund amount of Rs. 21,11,909/-.

7. I find that the appellant in their grounds of appeal have mainly contended that the adjudicating authority nowhere in the show cause notice nor the impugned order had given any clarifications how he arrived at the admissible refund amount of Rs. 75,99,100/-. In the SCN and the impugned order just a remark as "As per GSTR-1 of the relevant period, the turnover of inverted supply is Rs.1,10,25,12,885/- and tax payable thereon comes to Rs.5,70,98,295/-. Therefore admissible refund comes to Rs.75,99,100/-" has been mentioned. The formula on which the admissible refund arrived at has not been explained clearly in the impugned order.

8. Another contention of the appellant is that the adjudicating authority has not followed principles of natural justice. However, i find from the impugned order, the adjudicating authority has mentioned that the date of personal hearing was held on 12.05.2023 at 11.30 hrs. Hence, I disagree with the allegation of the appellant that they have been denied the principle of natural justice.

9. Regarding the main contention of the appellant that there had not been any transparency on how the admissible refund figure of accumulated ITC on inverted tax structure has been arrived by the adjudicating authority, I would

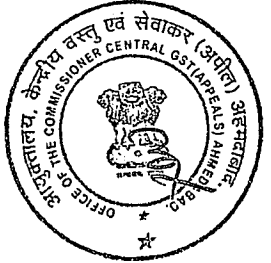
like to go through the provisions of the same which have been reproduced below;-

Sub-rule (5) of rule 89 of the principal CGST rule reads as under:- "In case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formulae:-

Maximum refund amount = $\frac{\{(\text{Turnover of inverted rated supply of goods}) \times \text{Net ITC}\}}{\text{Adjusted total turnover}}$ - tax payable on such inverted rated supply of goods. For the purpose of this rule, the expression "Net ITC" and "Adjusted total turnover" shall have the same meaning as assigned to them under subrule (4)."

Clause (B) of Rule 89(4) defines Net ITC as under:- "Net ITC" means input tax credit availed on input and input services during the relevant period". Clause (E) of Rule (4) defines Adjusted total turnover as under:- "Adjusted total turnover" means the turnover in a state or union territory, as defined under sub-section (112) of Section 2, excluding the value of exempt supplies other than Zero rated supplies, during the relevant period.

Sub-rule (5) of rule 89 was later amended vide notification no. 21/2018 - Central Tax dated 18.04.2018. The amended Sub-rule (5) of rule 89 reads as under: - "In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:- Maximum Refund Amount = $\frac{\{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC}\}}{\text{Adjusted Total Turnover}}$ - tax payable on such inverted rated supply of goods and services.




Explanation: - For the purposes of this sub-rule, the expressions - (a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and ["Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).

10. Now, let us examine the provisions contained in this regard under Sec 54 of the CGST Act 2017. The provisions as contained in Sec 54 of CGST Act 2017 Sub-section (3) of Sec 54 of the CGST Act 2017 (herein after referred to as Act/) reads as under:- ***"Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilized input tax credit at the end of any tax period. Provided that no refund of unutilized input tax credit shall be allowed in cases other than - a) Zero rated supplies made without payment of tax; b) Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated of fully exempt supplies) except supplies of***

goods and services or both as may be notified by the Government on the recommendation of the Council. Provided further that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty: Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims of refund of the integrated tax paid on such supplies."

11. So on combined reading of the above provisions of the Act, it is clear that the refund of unutilized input tax credit can be claimed for IGST, CGST, SGST, UTGST etc charged by the supplier on Capital goods, inputs and input services lying unutilized at the end of any tax period due to the reasons stated in Sec 54(3). The above provisions of the Act are summarized as under – a) A registered person may claim refund of input tax credit accumulated due to inverted duty structure as per provisions of Sec 54(3). b) Refund includes refund of unutilized input tax credit on account of inverted duty structure as per the definition of "refund" stated in clause (1) of explanation to Sec 54. c) "Input tax credit" means the credit of input tax {refer Sec 2(63) of the Act}. d) "input tax" means the CGST, SGST, IGST, UTGST etc charged by the supplier to a registered person for supply of goods or services or both. {refer Sec 2(62) of the Act}. e) "Goods" includes both Capital Goods as well as inputs (other than capital goods) {refer Sec 2(59) of the Act.



Further, the as per para 54 of the Circular No. 125/44/2019-GST dated 11.12.2019 vide which it was clarified as under: "Refund of unutilized ITC in case of inverted tax structure, as provided in Section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the COST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax." Thus, it is clearly explained in the Circular supra, that the Net ITC covers the ITC availed on all inputs in the relevant period, in the instant case, it covers ITC availed on inputs purchased @ 5%, 12%, 18%. Correspondingly, the "Turnover of inverted rated supply of goods and services" and "tax payable on such inverted rated supply of goods and services" should also cover all the outwards supplies made by the appellant.

13. Further, according to Section 17(2) of the CGST Act, 2017; "Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies."

14. Also, Rule 42 of the COST Rules, 2017 specifies the manner of determination of ITC in respect of inputs or input services and reversal thereof. Sub Rule (1) of Rule 42 states that: "The input tax credit in respect of inputs or input services, which attract the provisions of sub-section(1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies."

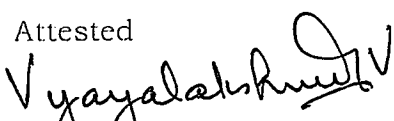
15. Thus, on going through the above provisions of GST and grounds of appeal submitted from the appellant, it is not forthcoming from the impugned order, how the adjudicating authority has arrived at the calculation of admissible refund amount of ITC accumulated on inverted duty structure.

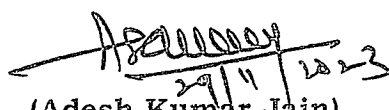
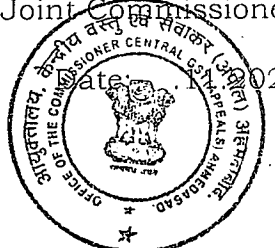
16. In view of the above facts and discussions, I set aside the impugned order with direction to the Refund Sanctioning Authority for proper scrutiny of the refund claim filed by the appellant and pass speaking order following principle of Natural Justice. The appellant is also directed to submit all the relevant documents/submission before the refund sanctioning authority and the refund Sanctioning Authority shall verify the facts again and pass order accordingly.

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

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

Attested


(Vijayalakshmi V)
Superintendent (Appeals)
Central Tax, Ahmedabad


29/11/2023
(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 29/11/2023


By R.P.A.D.

To,
M/s. Jindal Worldwide Limited
Opp. D-Mart, I.O.C. Petrol Pump Lane
Shivranjani Shyamal 132 Ft Ring Road
Satellite, Ahmedabad
Gujarat - 380 015

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

