



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- 20231264SW000000DA17

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/3372/2023 -APPEAL / 94AS-80

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 176/2023-24

दिनांक Date : 30.11.2023 जारी करने की तारीख Date of Issue : 08.12.2023

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. ZF2406230406409 dated 28.06.2023 issued by The Assistant Commissioner, CGST & CX, Div-I, Ahmedabad South.

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

Appellant	Respondents
M/s Arihanta (Legal Name: Bajrang Manalal Bothra), Maliya, 217, New cloth market, O/S Raipur Gate, Ahmedabad, Gujarat, 380008	The Assistant Commissioner, CGST & CX, Div-I, 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) 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-APPEALBrief Facts of the Case :

M/s.Arihanta (Legal Name : Bajrang ManalalBothra) Maliya, 217, New Cloth Market, O/S Raipur Gate, Ahmedabadm Gujarat - 380008(hereinafter referred as 'Appellant') has filed the present appeal against Order No. ZF2406230406409 dated 28.06.2023 passed in the Form-GST-RFD-06 (hereinafter referred as 'impugned order') rejecting refund claim of Rs.13,06,690/- issued by the Assistant Commissioner, CGST & C. Ex., Division - I, 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.24ABJPB8306J1ZT has filed the present appeal on 23.08.2023. The 'Appellant' is engaged in trading activity of goods namely Plain RFD Fabrics, Sterile Latex Gloves & Examination Latex Gloves. The applicable rate of tax on these goods is 5% and 12% respectively. The rate of tax on input supply remains the same as that of output supplies in all three products and therefore there is no accumulation of Input Tax Credit. However, while carrying out its normal trading activity, the appellant sold Latex Examination Gloves on the concessional rate of tax in terms of Notification No.40/2017-Central Tax (Rate) dated 23.10.2017, the rate of tax on output supply tends to become lower as compared to the rate of tax on input supply resulting in the tax rates on input supply and output supplies created an inverted duty structure.



3. The appellant filed refund in Form RFD-01 on 02.05.2023 for an amount of Rs.13,06,690/- for the period April'2022 to October'2022. The proper officer on scrutiny of the refund claim, issued show cause notice dated 24.05.2023 with the remarks "Value of inverted duty and adjusted total turnover is incorrect". Further, the appellant was directed to reply within 15 days from the date of service of the notice and personal hearing scheduled on 26.05.2023. Reply to show cause notice was done by the appellant along with supporting documents such as Statement-1A, GSTR2B, Annexure-B, Declarations, Refund working etc. The Adjudicating Authority, without considering the reply of the appellant rejected the refund claim of Rs. 13,06,690/- through the impugned order on the following grounds:

- (i) The reply is not found acceptable as the claimant did not consider outward supply @12% in calculation of refund. Further, Annexure

B is also incorrect and the claimant have also considered ITC on input services in calculation of Net ITC. Further, on going through the HSN of outward supplies of the tax payer whose ITC have been claimed in Annexure-B, the same does not co-relate with one another. In Annexure-B, HSN mentioned against the tax payer is different with the outward supplies of the same tax payer. Hence claim is liable for rejection.

4. Aggrieved with the impugned order the appellant has filed appeal with this office on 23.08.2023 through online on the following grounds:

- (i) The adjudicating authority has violated the principles of natural justice without providing the appellant with a valid opportunity of being heard; The authority did not provide any calculation or methodology used by them to arrive at the figures mentioned in the SCN, and simply stated that "Value of inverted duty and adjusted total turnover is incorrect." The notice provided in the present case lacks precision and contains numerous ambiguities;
- (ii) The Asst. Commissioner did not provide any reasons for their discrepancy related to ITC in the SCN. They simply mentioned that value of inverted duty turnover and adjusted total turnover is incorrect and later on took on his discrepancy in ITC as one of the bases for refusing the refund.
- (iii) The appellant has relied upon the judgement of Hon. Madras High Court in Ramadas v. Joint Commissioner of C.Ex.Puducherry, wherein it was held that, the very purpose of the SCN issued is to enable the recipient to raise objections, if any, to the proposals made and the concerned authority is required to address such objections raised. This is the basis of the fundamental principles of natural justice.
- (iv) Ongoing through the facts and the circumstances of all the above cases your appellant has similar facts and not providing the valid opportunity of being heard is against the natural justices which your appellant expects here;
- (v) The adjudicating authority erred in law and facts of the cases by rejecting the refund claim without duly considering the submissions made by the appellant; that they had submitted a reply in Form RFD-09 on 05.06.2023 by attaching all the documents for substantiating the refund claim. Despite the appellant's earnest efforts to submit the reply in the most



appropriate and possible manner, the Asst. Commissioner proceeded in a mechanical manner and issued the reject order without considering their reply.

- (vi) The adjudicating authority has erred in the law and facts of the cases by issuing the order in contravention of the provisions stipulated in the CGST Act, 2017 and rules made thereunder; The refund claim was made in accordance with the provisions of CGST Act, 2017 and Notification and Circular issued in relation to it;
- (vii) The Adjudicating authority has considered the total turnover as per the sales register for the purpose of calculation of inverted rated turnover; the appellant had explained to the Asst. Commissioner the rationale behind not considering the turnover arising from trading sales in the inverted rated turnover. However, the same has not been considered by them while issuing the refund order.
- (viii) The adjudicating authority has contravened the provision stipulated under Section 54(3) and related rules while rejecting the refund; the documents submitted with RFD-01 as per rule 89(5) of CGST Rules, 2017; The calculation for arriving at the adjusted turnover is specified under Rule 89(5) :
- $$\text{Maximum Refund Amount} = \{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC} / \text{Adjusted Total Turnover}\} - \text{tax payable on such inverted rated supply of goods and services.}$$
- (ix) 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. The following figures will suffice the requirement;



Particulars				Total Turnover	Tax Payable
	0.01%	5%	12%		
IDS Turnover	13849000	0	0	13849000	13848
Non-inverted rate. turnover	0	5247595	27668430	32916025	3582591
Total	13849000	5247595	27668430	46765025	3596439

- (x) 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.

- (xi) Vide circular no.173/05/2022-GST dated 06.07.2022, sort of corrigendum in nature to circular mentioned at para x 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.
- (xii) Based on the above circulars, in present, the appellant has considered turnover of only those supplies which are made under concessional notification as inverted rated turnover.
- (xiii) 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 30.11.2023 wherein Ms. Raksha Agrawal, C.A. appeared on behalf of the appellant as authorized representative. During PH she reiterated the written submissions/grounds of appeal filed by them and stated that the Ld. Assistant Commissioner has not given any reasoning in the OIO. Further the authority has taken all the sales of goods @ 12% under IDS turnover which is not proper and requested to allow their appeal.

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.13,06,690/- for the period from April'2022 to October'2022 on concessional rate of tax in terms of Notification No.40/2017-Central Tax (Rate) dated 23.10.2017 on 02.05.2023. The *adjudicating authority* has rejected the said refund claim 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 refund claim.

6.1 First of all, I would like to take up the issue of filing the appeal and before deciding the issue of filing the appeal on merits, it is imperative

that the statutory provisions be gone through, which are reproduced, below:

SECTION 107. Appeals to Appellate Authority. — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2)

(3)

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a **further period of one month.**

6.1 I observed that in the instant case that as against the impugned order of dated 28.06.2023, the appeal has been filed on 23.08.2023 i.e. appeal filed in the normal period prescribed under Section 107(1) of the CGST Act, 2017. I proceed further to decide the case.

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 on the grounds of refund rejection. In the SCN just a remark stating "Value of inverted duty and adjusted total turnover is incorrect" and the impugned order where the refund claim has been rejected just states that "The reply is not found acceptable as claimant did not consider outward supply @12% in calculation of refund. Further, Annexure B is also incorrect and the claimant have also considered ITC on input services in calculation of Net ITC. Further, on going through the HSN of outward supplies of the tax payer whose ITC have been claimed in Annexure-B, the same does not co-relate with one another. In Annexure-B, HSN mentioned against the tax payer is different with the outward supplies of the same tax payer. Hence claim is liable for rejection. The appellant's main contention is that the ground has not been elaborately discussed in the impugned order and the adjudicating authority has merely taken the total turnover from the sales register and has rejected the refund claim.

8. Another contention of the appellant is that the adjudicating authority has not followed principles of natural justice. However, I find from the show cause notice that the date of personal hearing was scheduled on 26.05.2023 and whether the appellant attended the said hearing or not has not been discussed either in the impugned order. The appellant in their submissions has stated that the adjudicating authority had not heard them in person and without considering their reply to show cause notice has rejected their refund claim. Hence, I find it relevant to refer Rule 92(3) of the CGST Rules, 2017

according to which "no application for refund shall be rejected without giving the applicant an opportunity of being heard". In the present case I find that the adjudicating authority has offered a P.H. on 26.05.2023 as per the show cause notice however, from the contentions of the appellant it appears that they could not attend the PH on given date. The adjudicating authority has rejected the refund application without providing any further opportunity of PH to the appellant.

9. From the grounds on which the refund claim has been rejected, I find that the adjudicating authority nowhere in her order has discussed in detail with illustrations regarding the HSN variations, what is the exact ITC as per records available with the department, what would be the exact calculation of the admissible refund amount etc. etc. Regarding the main contention of the appellant, that there had not been any transparency on how the adjudicating authority arrived at her apprehensions without considering the supporting documents filed by the appellant is not forthcoming. In respect of the calculation/verification of the adjusted turnover, 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 = $\{(Turnover\ of\ inverted\ rated\ supply\ of\ goods) \times Net\ ITC\} / Adjusted\ total\ turnover\} - tax\ payable\ on\ such\ inverted\ rated\ supply\ of\ goods.$ 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 = $\{(Turnover\ of\ inverted\ rated\ supply\ of\ goods\ and\ services) \times Net\ ITC\} \div Adjusted\ Total\ Turnover\} - tax\ payable\ on\ such\ inverted\ rated\ supply\ of\ goods\ and\ services.$



- 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 fund of the integrated tax paid on such supplies."***

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) of the CGST Act, 2017. 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.

12. Further, the as per para 54 of the Circular No. 125/44/2019-GST dated 18.11.2019 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%. and sold at concessional rate in terms of Notification No.40/2017-Central Tax (rate) dated 23.10.2017. 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, on which basis the adjudicating authority has rejected the refund claim of the appellant.

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. I also direct the appellant 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.

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

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

Adesh Kumar Jain
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: .11.2023

Attested

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



By R.P.A.D.

To,
M/s. Arihanta
Legal Name: Bajrang Manalal Bothra
217, Maliya, New Cloth Market,
O/S Raipur Gate, Ahmedabad
Gujarat - 380 008

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

