



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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DIN- 20230764SW000061136D

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1335 to 1340/2023 -APPEAL / 2298-2803

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-46 to 51/2023-24**

दिनांक Date : **30-06-2023** जारी करने की तारीख Date of Issue : **05-07-2023**

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. ZL2403230082973 Dt. 05.03.2023, ZF2403230288428 Dt. 16.03.2023, ZK2403230082984 Dt. 05.03.2023, ZI2403230082951 Dt. 05.03.2023, ZL2401230355659 Dt. 29.01.2023 & ZM24032303425595 Dt. 22.03.2023

issued by The Assistant Commissioner, CGST, Division-VII, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**M/s. Shivam Minerals and Allied industries Pvt. Ltd., A-411, Mondeal Heights,
Nr. Wide Angle, S.G. Highway, Ahmedabad-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 Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट 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 :**

The following appeals have been filed by **M/s. Shivam Minerals and Allied Industries Pvt. Ltd.** (GSTN No. 24AAHCS9912R1ZL) (hereinafter referred to as the '**Appellant**'), A-411, Mondeal Heights, Near Wide Angle, S. G. Highway, Ahmedabad - 380 015 against the RFD-06 Orders (hereinafter referred to as the '**impugned orders**') passed by the Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the '**adjudicating authority**').

Sr. No.	Appeal No. & Date	RFD-06 Order No. & Date	Amount of Refund considered as Inadmissible
1	GAPPL/ADC/GSTP/1335/2023 Dated 24.04.2023	ZL2403230082973 Dated 05.03.2023	Rs.9,36,346/-
2	GAPPL/ADC/GSTP/1336/2023 Dated 24.04.2023	ZF2403230288428 Dated 16.03.2023	Rs.82,161/-
3	GAPPL/ADC/GSTP/1337/2023 Dated 24.04.2023	ZK2403230082984 Dated 05.03.2023	Rs.1,17,408/-
4	GAPPL/ADC/GSTP/1338/2023 Dated 24.04.2023	ZI2403230082951 Dated 05.03.2023	Rs.27,775/-
5	GAPPL/ADC/GSTP/1339/2023 Dated 24.04.2023	ZL2401230355659 Dated 29.01.2023	Rs.2,11,476/-
6	GAPPL/ADC/GSTP/1340/2023 Dated 24.04.2023	ZM2403230342595 Dated 22.03.2023	Rs.1,98,657/-

2. Briefly stated the fact of the case is that the Appellant registered under GSTIN No. 24AAHCS9912R1ZL has filed following refund claims for refund of ITC accumulated due to export without payment of tax under Section 54 of CGST Act, 2017.

Sr. No.	Period	Refund ARN & Date	Amount of Refund claims
1	October - 2022	AA240123137231Z / 27.01.2023	Rs.33,92,218/-
2	January - 2023	AA240323009960L / 03.03.2023	Rs.28,00,031/-
3	November - 2022	AA240123137338J / 27.01.2023	Rs.34,13,149-
4	December - 2022	AA240123120028Z / 23.01.2023	Rs.13,18,662/-
5	July - 2022	AA241222006539K / 03.12.2022	Rs.17,88,725/-
6	Aug. to Sept. - 2022	AA240123095530M / 19.01.2023	Rs.25,71,238/-

After verification of the claims it was observed by the Adjudicating Authority that the claimant has shown adjusted total turnover for the said period which are not as per GSTR 3B returns of said period. Accordingly, while calculating the admissible amount of refund considered the figure of adjusted total turnover as per GSTR-3B returns. Further, the adjudicating authority has restricted the refunds to the ITC as per those invoices, details of which are uploaded by the supplier in Form GSTR-1 and

are reflected in FORM GSTR 2A of the applicant in terms of Circular No. 135/05/2020-GST dated 31.03.2020. In response to SCNs the appellant has referred Circular No. 147/03/2021-GST dated 12.03.2021 and contended that same value of zero rated supply to be considered at numerator and denominator while calculating admissible amount of refund. Whereas, the adjudicating authority has given findings in the impugned orders that said Circular is regarding issue related to mismatch of the amount in respect of supply of domestic goods and supply of exported goods, therefore does not pertain to issue related to FOB Value and Invoice Value. Accordingly, in view of above, the adjudicating authority has considered the figures of Net ITC, Zero Rated Turnover & Adjusted Turnover as under and apply the same in formula for calculating the admissible amount of refund and sanctioned the refunds to the *appellant* as under :

(Amount in Rs.)

Period of Refund claim	Adjusted Total Turnover as per RFD-01 (1)	Adjusted Total Turnover as per GSTR-3B (2)	Net ITC (3)	Zero rated Turnover (4)	Refund Amount admissible / sanctioned (4*3/2)
October - 2022	7,53,87,474	10,21,30,321	35,85,374	7,13,26,109	24,55,872
January - 2023	3,07,84,404	3,17,15,006	36,36,099	2,37,05,976	27,17,870
November - 2022	4,19,58,978	4,34,53,726	77,67,441	1,84,37,504	32,95,741
December - 2022	4,33,45,630	4,42,78,284	44,95,648	1,27,14,128	12,90,887
July - 2022	2,58,07,279	2,92,67,490	23,34,310	1,97,75,492	15,77,249
Aug. to Sept. - 2022	4,18,87,456	4,61,00,008	28,29,433	3,21,84,271	19,75,341

3. In view of above, the appellant has filed the present appeals on the following grounds that -

- They have exported goods under LUT without payment of Tax and filed refund claims by considering following factual figures :

Period	Value of Outward Supply other than Zero Rated Supply (1)	Value of Zero Rated Supply (FOB Value) (2)	Adjusted Total Turnover (1+2)
October - 2022	40,61,365	7,13,26,109	7,53,87,474
January - 2023	70,84,428	2,37,05,976	3,07,84,404
November - 2022	2,35,21,474	1,84,37,504	4,19,58,978
December - 2022	3,06,31,502	1,27,14,128	4,33,45,630
July - 2022	60,31,787	1,97,75,492	2,58,07,279
Aug. to Sept. - 2022	97,03,184	3,21,84,272	4,18,87,456

- The AC, Division VII Ahmedabad South has issued SCNs calculating admissible amount of refunds by considering Adjusted Total Turnover as per GSTR 3B instead of adjusted total turnover as calculated in above table.
- They have submitted their replies in Form RFD-09. However, authority has passed orders RFD-06 without considering their submissions.
- While passing refund orders, the adjudicating authority has not clarified in their orders with regard to value of Adjusted Total Turnover. In this regard,

CBIC has issued Circular No. 147/03/2021-GST dated 12.03.2021 wherein it is explained that how to calculate adjusted total turnover while deriving eligible refund amount.

- Said Circular also ignores the invoice value/transaction value as defined u/s 15 of the CGST Act, 2017 for zero rated supply of goods while calculating the value of Adjusted Total Turnover. However, nothing is discussed by the authority about value of adjusted total turnover as per the order passed the appellate authority.
- CBIC vide aforesaid Circular dated 12.03.21 clarified that to ignore the actual transaction value of exported goods and to take restricted value of exported goods while calculating the Adjusted Total Turnover.
- They have shown CIF value of goods exported as zero rated turnover while filing GSTR 1 and GSTR 3B. However, such value of invoices bifurcated in FOB value of goods, Insurance and Freight in the Bill of Export/Shipping Bill.
- They have rightly considered value of zero rated goods as mentioned by adjudicating authority while calculating eligible amount of refund. Authority have accepted the value of zero rated turnover as mentioned in the RFD-1 and have not argued with it. However, authority has wrongly considered value of adjusted total turnover in the formula prescribed in Rule 89(4). In this regard they referred Section 14 of the Customs Act, 1962 as per said provision the value of goods for purpose of export shall be FOB value.
- Adjudicating Authority has taken value of adjusted total turnover by taking value of export/zero rated supply of goods as per Section 15 of the CGST Act, 2017 (i.e. invoice value) to arrive at admissible amount of refund under Rule 89(4) of the CGST Rules, 2017.
- Refund sanctioning authority has sanctioned refund by considering Circular No. 125/44/2019-GST dated 18.11.19 and Notification No. 14/2022-CT dated 05.07.2022 wherein they have considered restricted value of exported goods (i.e. FOB Value), for which the appellant has no argument. However, while deriving the value of Adjusted Total Turnover authority has re-defined the value of exported goods wherein, they have considered Invoice Value of exported goods instead of restricted value i.e. FOB Value. Hence, they have considered two view on the value of exported goods, one for numerator and another for denominator which discriminate the value of same goods exported.
- Further, authority has ignored CBIC's Circular No. 147/03/02021-GST wherein the CBIC has ignored the actual transaction value of goods and



considered restricted value of exported goods while calculating Adjusted Total Turnover for the purpose of calculating eligible amount of refund.

- *Moreover, the Commissioner (Appeal), CGST Ahmedabad in their case has also taken same view in OIA No. AHM-CGST-001-APP-137 to 139/2022-23 dated 20.10.2022.*
- *In view of above grounds the appellant has made prayer that their appeals may be allowed and grant the refund amount so short granted vide impugned orders.*

4. Personal Hearing in the matter was held on 28.06.2023 wherein Sh. Tejendra Thakkar appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has submitted that -

- *Similar matter has been passed in their favour and departmental appeals were rejected. He relied upon the OIA No. AHM-CGST-001-APP-137 to 139/2022-23 dated 20.10.2022.*
- *As per Rule 89(4) FOB value has to be taken for calculations at numerator and denominator in formula, accordingly prayed for re-calculation of refund and impugned OIOs may be modified to that extent. Refund sanctioning authority may be directed accordingly.*

Discussion and Findings :

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. I find that the appellant had preferred refunds of accumulated ITC due to export of goods without payment of tax. The main issue involved in the present appeals are that the adjudicating authority has considered value as per GSTR 3B (i.e. invoice value) for turnover of zero rated supply of goods in "Adjusted Total Turnover" for arriving admissible refund. Whereas, the appellant has contended that same value (i.e. FOB Value) considered for zero rated turnover should be consider for the turnover of zero rated supply of goods in Adjusted Total Turnover also. However, I find that the adjudicating authority has considered FOB Value declared in Shipping Bills/Bills of Export for the zero rated turnover and considered Invoice Value as declared in GSTR 3B for Zoro rated turnover in Adjusted Total Turnover. Accordingly the admissible refund comes to less than the refund amount claimed by the appellant.

6. The appellant in the present appeals taken the view that the value taken towards turnover of zero rated supply of goods needs to be taken towards value export goods in the adjusted turnover also for determining admissible refund. In other words, in the formula prescribed under Rule 89 (4) of CGST Rules, if FOB value is taken for turnover of zero rated supply of goods

in numerator, the same value should be taken towards value of export goods for arriving adjusted total turnover. I find that the appellant in this regard has referred the CBIC Circular No.147/03/2021-GST dated 12.03.2021 wherein it was clarified that for the purpose of Rule 89 (4) the value of export/zero rated supply of goods to be considered to be included while calculating adjusted total turnover will be the same as being determined as per the amended definition of turnover of zero rated supply of goods in the said sub rule.

7. In view of above I also 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*



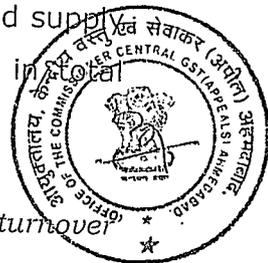
by a taxable person, exports of goods or services or both and inter State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess”

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. I further find that 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 appeals, the value of zero rated turnover i.e. value of export was taken as FOB value as per shipping bill. However, the adjusted turnover is taken as per GSTR-3B returns, which imply that turnover of zero rated supply in adjusted total



turnover is taken as invoice value. Apparently, this result in adopting two different values for same zero rated supply of goods, which I find is wrong and not in consonance with statutory provisions, as the CBIC has conspicuously clarified vide aforesaid Circular dated 12.03.2021 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". Therefore, I am of the considered view that the same value of zero rated supply of goods i.e. value of export (FOB Value) taken as turnover of zero rated supply of goods in present matters need to be taken in adjusted total turnover also. Accordingly, I find that the adjudicating authority has erred in taking Invoice Value in Adjusted Total Turnover instead of value of export i.e. FOB Value while sanctioning the refund claims to the appellant in the present matters and rejected the partial amount of refund claims on the above stated ground. Therefore, I find the *impugned orders* passed by the *adjudicating authority* are not legal and proper to the above extent. Further, I find that this appellate authority has taken similar view in favour of appellant vide OIA No. AHM-CGST-001-APP-137 to 139/2022-23 dated 20.10.2022

9. In view of above discussions, the *impugned orders* passed by the *Adjudicating Authority* are set aside for being not legal and proper to the extent of rejection of refund claims on the grounds of considering two different values for same zero rated supply of goods i.e. FOB Value in numerator and Invoice Value in denominator. Accordingly, I allow the appeals of the "*Appellant*" to that extent only.

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

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

Adesh Kumar Jain
30/06/2023

(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: 30.06.2023

Attested

(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,

M/s. Shivam Minerals and Allied Industries Pvt. Ltd.,
A-411, Mondeal Heights, Near Wide Angle,
S. G. Highway, Ahmedabad - 380 015

Copy to :

1. The Principal Chief Commissioner, 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 Odhav, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File



