



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

07926305065-

टेलीफैक्स 07926305136



DIN- 20230764SW00006176D4

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/3,20 & 21/2023 -APPEAL/3131-36

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-69 to 71/2023-24**
दिनांक Date : **25-07-2023** जारी करने की तारीख Date of Issue : **27-07-2023**

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. **ZX2407220267410 DT. 19.07.2022**,
ZN2407220413309 DT. 29.07.2022 & ZX2406220275197 DT. 11.06.2022 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 Ratnam Stone Exports, 903, 9 th Floor, Indraprasth Corporate, Opp. Venus Atlantis, Nr. Prahladnagar Garden, Prahladnangr Road, 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 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 दायर 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 Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the *appellant/department*) has filed the following appeals offline in terms of Advisory No.9/2020 dated 24.09.2020 issued by the Additional Director General (Systems), Bengaluru against following 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*") sanctioning refunds to **M/s. Ratnam Stone Exports**, 903, 9th Floor, Indraprasth Corporate, Opp. Venus Atlantis, Nr. Prahladnagar Garden, Prahladnagar Road, Ahmedabad – 380 015 (hereinafter referred to as the *Respondent*).

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date (' <i>Impugned Orders</i> ')
GAPPL/ADC/GSTD/20/2023 Dt. 17.01.23	60/2022-23 Dtd. 13.01.23	ZX2407220267410 Dtd. 19.07.22
GAPPL/ADC/GSTD/21/2023 Dt. 27.01.23	63/2022-23 Dtd. 25.01.23	ZN2407220413309 Dtd. 29.07.22
GAPPL/ADC/GSTD/3/2023 Dt. 12.12.22	54/2022-23 Dtd. 09.12.22	ZX2406220275197 Dtd. 11.06.22

2. Briefly stated the fact of the case is that the *Respondent* registered under GSTIN No. 24AAGFR1203E1ZW has filed the following refund claims of accumulated ITC due to export without payment of tax :

ARN No. / Date	Period of Refund Claim	Refund Claim Amount
AA240622091689T / 23.06.22	April 2022	Rs.14,13,246/-
AA240722028192L / 08.07.22	May 2022	Rs.14,24,838/-
AA240622013219M / 03.06.22	March 2022	Rs.34,71,843/-

After verification the *Adjudicating Authority* has sanctioned the refunds to the *Respondent*. During review of refund claims it was observed by the department that higher amount of refunds has been sanctioned to the *Respondent* than what is actually admissible to them in accordance with Rule 89 (4) of CGST Rules, 2017 read with Section 54 (3) of CGST Act, 2017. It was observed that turnover of zero rated supply has been taken as Rs.2,49,48,316/-, Rs.2,12,55,422/- and Rs.2,69,64,816/- which are the invoice value of goods exported, whereas as per shipping bill FOB value, the turnover of zero rated supply are Rs.1,92,67,999/-, Rs.1,79,41,059/- and Rs.1,89,89,847/- respectively. Accordingly, the *appellant/department* has referred the para 47 of CBIC Circular No.125/44/2019-GST dated 18-11-2019 and also referred Para 8 of Notification No. 14/2022 – Central Tax dated 05.07.2022 ; vide which it was clarified that during processing of refund claim, the value of goods declared in GST invoice and the value in the corresponding shipping bill/bill of export should be examined and the lower of the two values should be taken into account while calculating the eligible amount of

refund. Thus taking the lower value of goods exports and applying the formula for refund of export without payment of tax the admissible refund comes as per below table instead of refund sanctioned by the *adjudicating authority* to the *Respondent*. Thus there is excess sanction of refunds to the *Respondent* which is required to be recovered along with interest. The details are as under :

(Amount in Rs.)

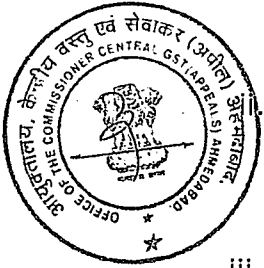
Refund claim for period	Turnover of Zero rated supply (Invoice Value) (1)	Turnover of Zero rated supply (FOB Value which is lower value) (2)	Net ITC (3)	Adjusted Total Turnover (4)	Refund Amount sanctioned (Invoice Value) (1*3/4)	Refund Amount admissible (FOB Value) (2*3/4)	Excess Refund amount sanctioned
April'22	24948316	19267999	1413246	24948316	1413246	1091473	3,21,773/-
May'22	21255422	17941059	1424839	21255422	1424838	1202664	2,22,174/-
March'22	26964816	18989847	3471843	26964816	3471843	2445029	10,26,814/-

3. In view of above, the *appellant/department* filed the present appeals on the grounds that the *adjudicating authority* failed to consider the lower value of zero rated turnover while granting the refund claim of ITC accumulated due to export of goods without payment of tax as required under Circular NO.125/44/2019-GST dated 18.11.2019 read with Notification No. 14/2022-Central Tax dated 05.07.2022 which has resulted in excess payment of refunds to the *Respondent* as mentioned in the above table. Accordingly, the *Appellant/Department* has made prayer in the present appeals as under

- i. To set aside the *impugned orders* wherein the *adjudicating authority* has erroneously sanctioned refund of Rs.14,13,246/-, Rs.14,24,838/- and Rs.34,71,843/- instead of Rs.10,91,473/-, Rs.12,02,664/- and Rs.24,45,029/- respectively under Section 54 (3) of CGST Act, 2017; to pass an order directing the original authority to demand and recover the amount erroneously refunded of Rs.3,21,773/-, Rs.2,22,174/- and Rs.10,26,814/- with interest ;
- ii. to pass any other order(s) as deem fit in the interest of justice.

4. The Respondent has submitted the Cross-Objection on 01.05.2023 in respect of Appeal No. GAPPL/ADC/GSTD/20/2023 & GAPPL/ADC/GSTD/21/2023 and on 07.07.2023 in respect of Appeal No. GAPPL/ADC/GSTD/3/2023. The Respondent has submitted that -

- i. Turnover of Zero-Rated supply as per Rule 89(4) of the CGST Rules, 2017 is CIF Value (Transaction Value) under Section 15 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017.
- ii. According to Section 15 of the CGST Act and Section 20 of the IGST Act, the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where supplier and recipient of the supply are not related



and price is the sole consideration for the supply. Accordingly, they have rightly considered transaction value.

- iii. The refunds has been correctly sanctioned to them by the Refund Sanctioning Authority in terms of clarification given vide CBIC's Circular No. 125/44/2019 dated 18.09.2019.
- iv. In the instant matter they filed refund claim considering invoice value in numerator as well as denominator, since value of supply should not be different for two aspects in single formula.
- v. Since, they are 100% exporter, the value of zero-rated supply and the Adjusted Total Turnover would be same.
- vi. While recalculating the refund amount by the appellant/department, in the formula of refund under Rule 89(4), has adopted the FOB Value for export goods for arriving Turnover of Zero-Rated supply of goods, but considered the Invoice Value of Zero-Rated supply of goods for arriving Total Adjusted Turnover. Therefore, authority has considered two different values for the same supply which is legally not sustainable.
- vii. As per para 4 of CBIC Circular No. 147/02/2021-GST dated 12.03.2021 and definition of Adjusted Total Turnover, the value of zero rated supply is to be considered in numerator and denominator in the formula prescribed under Rule 89(4) of the CGST Rules, 2017 should be the same and there cannot be different criteria for computing numerator and denominator, that is for the value of turnover of zero rated supply of goods in the formula and hence by taking invoice value or FOB Value towards turnover of zero rated supply of goods, the admissible refund will remain same in such case.
- viii. Further, Notification No. 14/2022-Central Tax dated 05.07.2022 has prospective application and not retrospective application.
- ix. In view of above submissions, the Respondent has submitted that in any case they are duly eligible for refund of Rs.14,13,246/-, Rs.14,24,838/- and Rs.34,71,843/- even though they claim refund considering the value of zero rated supply being FOB Value. However, department/appellant has proposed to sanction refund amount of Rs.10,91,473/-, Rs.12,02,664/- and Rs.24,45,029/- respectively. Therefore, the action of the department is legally not sustainable in law.

In view of above, the Respondent has submitted that the refunds claimed by them are duly in compliance of provisions of GST mentioned in foregoing paras. Therefore, the appeals filed by appellant/department may be set aside.

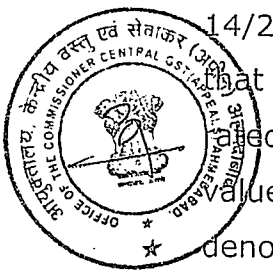
5. Personal Hearing in the matter was held on 12.07.2023 wherein Mr. Saurabh Singhal, C.A. appeared on behalf of the 'Respondent' as authorized representative. During PH he has stated that the value of export for numerator as well as for denominator in formula should be taken and

which should be FOB value as per Rule 89(4) of the CGST Rules, 2017. The department's contention that for denominator (i.e. total adjusted turnover) Invoice Value should be taken is contrary to the Rule 89(4), thus not sustainable.

Discussion and Findings :

6. I have carefully gone through the facts of the case, grounds of appeals and also gone through the submissions made by the *Respondent* and documents available on record. I find that the present appeals are filed to set aside the *impugned orders* on the ground that the *Adjudicating Authority* has sanctioned excess refunds to the *Respondent* and to order recovery of the same along with interest. The grounds in appeals is that the *Respondent* has taken invoice value as turnover of zero rated supply of goods for arriving admissible refund whereas the turnover of zero rated supply of goods should be FOB value as per shipping bill which is the lower value, in terms of para 47 of Circular No.125/44/2019-GST dated 18.11.2019 as well as Notification No. 14/2022-Central Tax dated 14.07.2022 and accordingly the admissible refund comes to less than the sanctioned amount resulting in excess sanction of refunds to the *Respondent*. In the present appeal proceedings, I find that the *Respondent* has contended that they have rightly considered transaction value for zero rated supply turnover which is in accordance with Section 15 of the CGST Act & Section 20 of the IGST Act in the prescribed formula for computing admissible amount of refund ; that further the *Respondent* has also disputed about the applicability of Notification No. 14/2022-Central Tax dated 05.07.2022 with retrospective effect. Whereas, I find that during PH the *Respondent* has submitted that the value of export for zero rated supply turnover at numerator and denominator should be consider FOB value as per Rule 89(4) and therefore, the *department's* contention that for denominator i.e. Adjusted Total Turnover the Invoice Value to be consider is contrary to Rule 89(4) and thus not sustainable. Accordingly, the *Respondent* has mainly contended that there cannot be two different criteria for considering the value of zero rated supply in numerator and denominator in the prescribed formula for computing admissible amount of refund.

7. Further, on carefully going through the para 47 of Circular No. 125/44/2019-GST I find that the CBIC has clearly clarify that in case of claim made for refund of unutilized ITC on account of export of goods where there is difference in value declared in tax invoice i.e. transaction value under Section 15 of CGST Act, 2017 and export value declared in corresponding shipping bill, the lower of the two value should be taken into account while calculating the eligible amount of refund. Further, I find that as per Notification No. 14/2022-Central Tax



dated 14.07.2022 in the matter of Rule 89(4), *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 subject case, I find that Respondent has not produced any such documents which suggest that there is no difference between the invoice value (transaction value) and Shipping Bill value; or the Shipping Bill value i.e. FOB value is not lower than the corresponding invoice value as considered by the appellant/department in the present appeals.

Accordingly, as per aforesaid Circular the FOB value of goods which is lower among the two values need to be taken into account for determining admissible refund amount. Therefore, I find that the appellant/department has correctly pointed out in the present appeals that FOB value of goods i.e. lower value needs to be taken as turnover of zero rated supply of goods for determining the admissible refund amount which is in accordance with the above Circular dated 18.11.2019 and Notification dated 14.07.2022. However, I find that in the subject case, entire outward supply is zero rated supply turnover only and therefore, value of zero rated supply and value of adjusted total turnover will be same whether Invoice value to be considered or FOB value towards the zero rated turnover and adjusted total turnover in the formula prescribed under Rule 89(4) of the CGST Rules, 2017.

I also refer para 4 of CBIC Circular NO.147/03/2021-GST dated 23-2021, wherein Board has given guidelines for calculation of adjusted total turnover in an identical issue as under :

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 adjusted total turnover at denominator will be same. I find that in the present case the entire outward supply is zero rated supply turnover only.

9. 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, in view of above, I find that there is no excess amount of refunds has been sanctioned to the *Respondent* in the present matters. Therefore, I find that the *adjudicating authority* has rightly sanctioned the refund claims to the *Respondent* in the present matters. Therefore, I do not find any infirmity in the *impugned orders* passed by the *adjudicating authority* sanctioning refunds to the *Respondent*.

10. In view of above, I do not find any merit or legality in the present appeals filed by the *appellant/department* to set aside the *impugned orders* and to order for recovery of excess refunds of Rs.3,21,773/-, Rs.2,22,174/- and Rs.10,26,814/- on the grounds mentioned therein. Accordingly, I upheld the *impugned orders* and reject the appeals filed by the *appellant/department*.

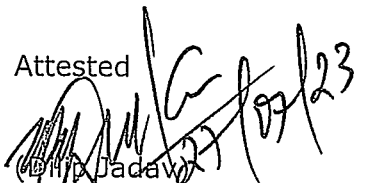
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

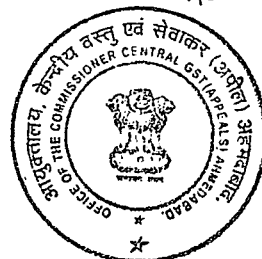
The appeals filed by the *appellant* stands disposed of in above terms.


(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: 25.07.2023

Attested


Anil Jadhav
Superintendent (Appeals)



By R.P.A.D.

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

Appellant

M/s. Ratnam Stone Exports,
903, 9th Floor, Indraprasth Corporate,
Opp. Venus Atlantis, Nr. Prahladnagar Garden,
Prahladnagar Road, 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 Appeals, Ahmedabad.
6. P.A. File
7. Guard File



