



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-20230864SW000000A00F

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/119/2023 -APPEAL) 1665 - 20

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-86/2023-24**

दिनांक Date : **31-07-2023** जारी करने की तारीख Date of Issue : **11-08-2023**

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. **ZI2411220331014 DT. 29.11.2022** issued by The Assistant Commissioner, CGST, Division-VI (Vastrapur), Ahmedabad South

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

Appellant	Respondent
M/s Bioweaves Retail LLP, GSTIN:24AAUFB5087E1Z8, 4 TH Floor, D-405, The First, Near Keshavbaugh Party Plot, VAstrapur, Ahmedabad -380015	The Assistant Commissioner, CGST, Division-VI (Vastrapur), 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 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 :**

M/s Bioweaves Retail LLP, 4th Floor, D-405, The First, Near Keshavbaug Party Plot, Vastrapur, Ahmedabad, Gujarat - 380 015 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 28.12.2022 against Order No. ZI2411220331014 dated 29.11.2022 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, CGST, Division - VI (Vastrapur), Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant registered under 24AAUFB5087E1Z8 has filed refund claim for Rs.33,04,028/- on 04.10.2022 for refund of ITC on account of export of goods & services without payment of tax for the period of January 2022 to June 2022. The appellant was issued show cause notice Ref No. ZI2411220152925 dated 15.11.2022 proposing rejection of refund to the extent of Rs.59,627/- on the following reasons :

" During the course of verification of above refund claim, following discrepancies were noticed:

The provision of Para 47 of Circular no. 125/44/2019-GST dated 18.11.2019 is as follows:

"During the processing of refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill/bill of exports should be examined and lower of the two values should be taken in to account while calculating the eligible amount of refund."

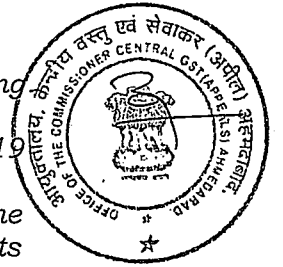
Accordingly, by taking lower value from invoice value and Fob value of Shipping Bill, zero rated turnover is Rs 4,87,70,852/- (a)

Adjusted Total Turnover is Rs. 4,93,64,185/- (b)

As per Annexure-B and GSTR 2A Eligible ITC is Rs. 33,04,197/- (c)

As per refund formula, eligible refund = (a)*(c)/(b) which comes to Rs. 32,44,401/-.

Refund claimed is Rs. 3304028/- therefore, Refund amounting to Rs. 59,627/- is liable for rejection.



Thereafter, on the basis of charges raised in the SCN, the adjudicating authority vide impugned order sanctioned refund of Rs.32,44,401/- and rejected refund of Rs.59,627/-.

3. Being aggrieved the appellant filed the present appeal on 28.12.2022 on the following grounds :

- The department has taken FOB value in the numerator and invoice value in denominator due to which refund of ITC of Rs.59,627/- rejected.

- The Adjusted Total Turnover calculated by the proper officer Rs.4,93,64,185/- is sum total of Invoice Value of Export Goods Rs.4,93,61,655/- + Local Goods Rs.2,530/-. The total FOB value for Zero Rated Turnover is Rs.4,84,70,852/-
- In reply to the notice issued, we referred to the order passed by Central GST, Appeal Commissionerate, Ahmedabad in case of M/s. Maxim Exports, wherein the commissioner of appeals have taken a view from CBIC Circular No. 147/03/2021-GST dated 12.03.2020 read with rule 89(4) of CGST Rules, 2017.
- The Appeal Commissionerate, hereby mentioned in the order passed "I find that the same value of zero rated supply of goods taken for turnover of zero supply of goods needs to be taken in adjusted total turnover also for arriving admissible refund. In other words, in cases where there is only zero rated supply of goods, the turnover of zero rated supply of goods and adjusted total turnover will remain the same in the formula prescribed under Rule 89(4) of CGST Rule, 2017. Accordingly, even of the shipping value (FOB value) is taken as turnover of zero rated supply of goods, the same value should be taken in adjusted total turnover towards value of zero rated supply of goods for determining the admissible refund and in such instance the appellant will be entitled to refund for the full amount claimed by them. The above view was also mandated in 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."
- That on the facts and in the circumstances of the case and in Law, the Ld. Officer has erred in determining the refund of the appellant. As such pending refund amount may please be sanctioned.



In view of above submissions the appellant pray for relief and the order of the Assessing Officer may kindly be modified.

PERSONAL HEARING :

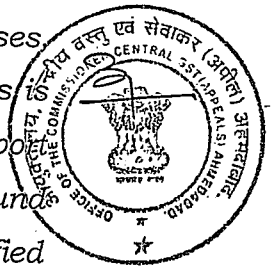
4. Personal hearing was held on dated 11.07.2023. Shri Dhruvin Amlani, C:A., authorized representative appeared on behalf of appellant. He stated that they are in export of goods more than 99% of their supply. Further value of export to be taken as per Rule 89(4) both for numerator as well as at denominator. He further submitted that two different value of export can't be taken for calculation of refund claim in formula, and

requested to allow their appeal as it is not in conformity to Rule 89(4) as well as clarification issued in this regard.

DISCUSSION AND FINDINGS :

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that in this case appeal was filed against impugned order wherein the refund amounting to Rs.59,627/- was held inadmissible and rejected by the adjudicating authority. I further notice that the adjudicating authority referring to para 47 of the Circular No. 125/44/2019-GST dated 18.11.2019 has taken the turnover of zero rated supply of goods at Rs.4,84,70,852/-; adjusted total turnover at Rs.4,93,64,185/- and Net ITC at Rs.33,04,197/- and thus arrived the admissible refund amount at Rs.32,44,401/-. For better appreciation of facts I reproduce Para 47 of Circular No.18.11.2019 as under :

47. It has also been brought to the notice of the Board that in certain cases where the refund of unutilized input tax credit on account of export of goods claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero-rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are meant for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill / bill of export. During the processing of the refund claim, the value of the goods declared in the 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.



6. The aforesaid Circular 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. In the subject case, I find that invoice value (transaction value) of goods cleared for export during the relevant months were Rs. 4,93,61,656/- whereas FOB value as per shipping Bill was Rs.4,84,70,852/-. 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 adjudicating authority has correctly taken FOB value of goods as turnover of zero rated supply of goods for determining the admissible refund amount which is in accordance with the above Circular.

7. However, I find that the appellant referring to Circular NO.147/03/2021-GST dated 12-3-2021 contended that value of zero rated supply to be considered in numerator and denominator in the formula prescribed under Rule 89 (4) of CGST Rules, should be the same and there cannot be different criteria for computing numerator and denominator i.e. for the value of turnover of zero rated supply of goods in the formula. I find force in the appellant's contention. In this regard I refer to para 4 of above Circular providing clarification 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.



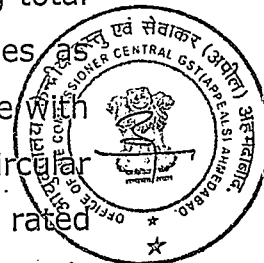
Applying the above clarification, the value of turnover of zero rated supply of goods i.e. value of export taken towards turnover of zero rated supply of goods need to be taken as value of zero rated supply of goods in adjusted total turnover in the formula. In other words, in cases where there is only 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 appeal, the value of zero rated turnover i.e. value of export was taken as FOB value as per shipping bill. However, the 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 matter need to be taken in adjusted total turnover also.

9. In the subject case, the appellant has filed refund claim taking into account turnover of zero rated supply at Rs.4,93,61,656/- being invoice value(transaction value) of export goods ; adjusted turnover at Rs. 4,93,64,186/- and Net ITC at Rs.33,04,197/-. On scrutiny of the documents I find that the appellant has made outward supplies (other than zero rated) of Rs.2,530/-. However the adjudicating authority has considered turnover value of zero rated supply at Rs.4,84,70,852/- being FOB value of export goods. Apparently, the adjudicating authority has considered FOB value of 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. This has resulted in adopting two different values as turnover of zero rated supply of goods which I find is not in consonance with the clarification issued vide above Circular. Therefore, as per above Circular in this case the FOB value of export goods taken for turnover of zero rated supply of goods need to be taken for turnover of zero rated supply of goods for arriving total adjusted turnover in the formula and not the value as per invoice value.

10. In view of facts of the case, submission made by the appellant and discussion made herein above, I hold that the adjudicating authority has rightly considered the turnover of zero rated supply goods based on FOB value being lower value in accordance with Circular No. 125/44/2019-GST dated 18.11.2019 read with Notification No. 14/2022-CT dated 05.07.2022. However, I hold that the adjudicating authority has wrongly taken the invoice value (transaction value) of turnover of zero rated supply of goods in total adjusted turnover of goods instead of considering the FOB value in terms of Circular No. 147/03/2021-GST dated 12.03.2021. Accordingly I hold that the adjudicating authority has wrongly arrived the admissible refund at Rs.32,44,401/- and thereby rejected the refund claim amounting to Rs.59,627/-. Therefore, I hold that the impugned order passed by the

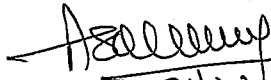


adjudicating authority rejecting refund of Rs.59,627/- is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order to the extent of rejection of refund claim of Rs.59,627/- and allow the appeal filed by the appellant to that extent only.

11. Accordingly, I allow the appeal of the "Appellant" with a direction to the proper officer to consider the submissions of *appellant* and process the refund application after due verification of documents/details of *appellant*. The 'Appellant' is also directed to submit all relevant documents/submission before the *adjudicating authority*.

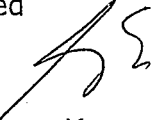
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


31/07/2023
(Adesh Kumar Jain)
Joint Commissioner (Appeals)

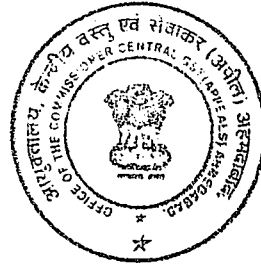
Date: 31.07.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

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

