



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-20230864SW0000000A56

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/83/2023 -APPEAL / 4557 - 62
 ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-87/2023-24
 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. ZH2408220074955 DT. 05.08.2022 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-VI (Vastrapur), Ahmedabad South	M/s Bioweaves Retail LLP, GSTIN:24AAUFB5087E1Z8, 4 TH Floor, D-405, The First, Near Keshavbaugh Party Plot, VAstrapur, 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) <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 Assistant Commissioner, CGST, Division VI, Ahmedabad South (hereinafter referred to as the '*Appellant/Department*') has filed the present appeal on 02.02.2023 against the Order No. **ZH2408220074955** dated **05.08.2022** (hereinafter referred to as the '*impugned order*') passed by the Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the '*Adjudicating Authority*') sanctioning refund to **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 '*Respondent*')

2. Briefly stated the fact of the case is that the '*Respondent*' registered under GSTN 24AAUFB5087E1Z8 had filed a refund claim of Rs.13,34,235/- for ITC accumulated due to export of goods/services without payment of Tax vide ARN No. AA206220632697 dated 17.06.2022 u/s 54 of the CGST Act, 2017. The *adjudicating authority* has sanctioned the said refund claim vide *impugned order* (RFD 06) dated 05.08.2022. The issue involved in the present appeal is that the Respondent had filed refund claim on account of ITC accumulated due to export of goods/services without payment of Tax for the period of October 2021 to December 2021; and said claim is sanctioned by the adjudicating authority vide Order ZH2408220074955 dated 05.08.2022 in the form of GST-RFD-06. However, on going through the refund claim, '*Appellant/Department*' has pointed out that higher amount of refund has been sanctioned to the claimant than what is actually admissible to them in accordance with Rule 89(4) of the CGST Rules, 2017 read with Section 54(3) of the CGST Act, 2017.

It is noticed that the turnover of zero rated supply has been taken as Rs. 2,33,16,779/- which is the invoice value of the goods exported, whereas, as per the shipping bill FOB value, the turnover of zero rated supply is Rs. 2,29,62,233/-. Thus taking the lower value of goods exported, applying the formula for refund of export without payment of duty, the fund admissible comes to Rs. 13,17,891/- instead of Rs. 13,34,235/- sanctioned by the sanctioning authority. Thus, there is excess sanction of refund of Rs. 16,344/- to the claimant which is required to be recovered alongwith interest. Accordingly, the '*Respondent*' had preferred the refund claim in question and same is allowed by the *adjudicating authority* vide *impugned*



order which is being challenged by the *department/appellant* in the present appeal proceedings.

3. The *appellant/department* filed the present appeal on 02.02.2023 on the following grounds:

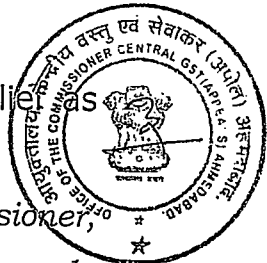
- i. *The Adjudicating Authority has considered higher value of turnover of zero rated supply i.e, Rs. 2,33,16,779/-, which is the invoice value of the goods exported instead of the lower value of goods exported i.e Rs. 2,29,62,233/- which is FOB value. On applying formulae for refund of export without payment of duty on the lower value i.e FOB value, the refund admissible comes to Rs. 13,17,891 instead of Rs. 13,34,235/- which was sanctioned by the adjudicating authority. Thus, there is excess sanction of refund of Rs. 16,344/- to the claimant which is required to be recovered alongwith interest.*
- ii. *The adjudicating authority has failed to consider the lower value of zero rated turnover while granting the refund claim of ITC accumulated due to export of goods/services without payment of tax required under Circular No. 125/44/2019-GST dated 18.11.2019; which has resulted in excess payment of refund of Rs. 16,344 to the claimant.*
- iii. *The impugned order passed by the Adjudicating Authority is not proper and legal in respect of the above facts.*

In view of above submissions the appellant/department pray for relief herein below:

- (a) *To set aside the impugned order passed by the Assistant Commissioner, CGST, Division-VII, Ahmedabad South, wherein he has erroneously sanctioned Rs. 13,34,235/- instead of Rs. 13,17,891/-, under section 54(5) of the CGST Act, 2017.*
- (b) *To pass an order directing the said original authority to demand and recovered the amount erroneously refunded of Rs. 16,344/- (Rs. 13,34,235/- minus Rs. 13,17,891/-) with interest.*
- (c) *To pass any other order(s) as deemed fit in the interest of justice.*

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/Department* and documents available on record. I find that the present appeal is filed to set aside the *impugned order* wherein the *adjudicating authority* has erroneously sanctioned refund of Rs.16,344/- to the *respondent* and to order recovery of the same along with interest.

I find that in this case appeal was filed against impugned order wherein the refund amounting to Rs.16,344/- was held inadmissible and needs to be 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.2,29,62,233/-; adjusted total turnover at Rs.2,29,66,983/- and Net ITC at Rs.13,38,512/- and thus arrived the admissible refund amount at Rs.13,38,235/- and accordingly sanctioned refund of Rs. 13,34,235/-. For better appreciation of facts I reproduce Para 47 of Circular No.18.11.2019 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 is 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. 2,33,16,779/- whereas FOB value as per shipping Bill was Rs.2,29,62,233/-. 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 invoice 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. I am 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 contentions 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/department has calculated refund claim taking into account turnover of zero rated supply at Rs.2,29,62,233/- being FOB value of export goods ; adjusted turnover at Rs. 2,33,21,529/- (includes invoice value) and Net ITC at Rs.13,38,512/-. However the adjudicating authority has considered turnover value of zero rated supply at Rs. 2,29,62,233/- being FOB value of export goods and adjusted turnover at Rs. 2,29,66,983/- (includes FOB value) and Net ITC at Rs.13,38,512/-. Apparently, the appellant/department 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/department and discussion made herein above, I hold that the adjudicating authority and appellant/department have 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

appellant/department 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 rightly arrived the admissible refund at Rs.13,34,235/-.

11. In view of the above discussions, I do not find any force in the contentions of the 'Appellant/Department'. Accordingly, I find that the *impugned order* passed by the *adjudicating authority* is legal and proper as per the provisions of GST law. Consequently, I do not find any reason to interfere with the decision taken by the "Adjudicating Authority" vide "Impugned Order". Accordingly, I upheld the "Impugned Order" and reject the appeal filed by the 'Appellant/Department'.

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.

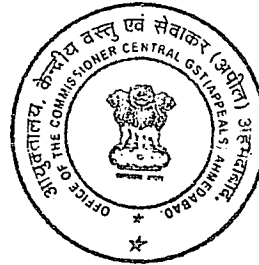
Adesh Kumar Jain
31/07/2023

(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: 31.07.2023

Attested

Sandheer Kumar
(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

