



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- 20230864SW000051035D

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTD/206 & 209/2023 -APPEAL /1588 - 93
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-88 to 89/2023-24**
दिनांक Date : **08-8-2023** जारी करने की तारीख Date of Issue : **11-08-2023**
श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

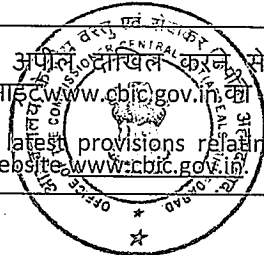
Passed by Shri. Adesh Kumar Jain, Joint Commissioner (Appeals)

- ग Arising out of Order-in-Original No. **ZL2411220133303 & ZG2411220133369** both dated **14.11.2022** 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, GSTIN: 24AAGFR1203E1ZW, 903, 9TH Floor, Indraprasth Corporate, Opp. Venus Atlantis, Nr. Prahladnagar Garden, Prahladnagar 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) <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 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

The Assistant Commissioner, CGST, Division V, Ahmedabad South (hereinafter referred to as the '**Appellant/Department**') in terms of Review Order No. 14/2023-24 & 13/2023-24 both dated 12.05.2023, issued under Section 107 of the CGST Act, 2017, has filed the present appeals offline in terms of Advisory No.9/2020 dated 24.09.2020 issued by the Additional Director General (Systems), Bengaluru. The appeals are filed against Orders No. ZL2411220133303 & ZG2411220133369 both dated 14.11.2022 (hereinafter referred to as the '**Impugned Orders**') passed in Form-GST-RFD-06 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**').

2(i). Briefly stated the fact of the case is that the *Respondent* registered under GSTN No. 24AAGFR1203E1ZW had filed refund claims of ITC accumulated due to export of goods/services without payment of tax. The details are as under :

ARN No. and Date	Period of Refund claim	Amount of Refund claim
AA2409220888642 / 27.09.2022	June 2022	Rs.16,47,184/-
AA241022062754K / 17.10.2022	July 2022	Rs.13,55,984/-

After verification of aforementioned refund claims, the *Adjudicating Authority* found the claims in order and accordingly has sanctioned the refund claims of Rs.16,47,184/- & Rs.13,55,984/- vide impugned orders.

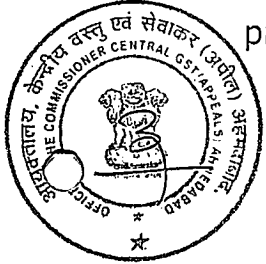
2(ii). During review of said refund claims it was observed by the *Department/Appellant* that the Adjusted turnover of supply has been taken as Rs.1,41,99,498/ & Rs.1,70,10,316/- which are found to be FOB Value whereas, as per GST Returns (Invoice Value) for respective months, the Adjusted total turnover of supply is Rs.1,64,66,105/- & Rs.1,86,01,366/- respectively. While considering the Adjusted Turnover, the Adjudicating Authority has considered the FOB Value, however, Invoice Value declared by the Claimant in respective Returns were required to be consider. For more clarity, the department has referred definition of Adjusted Total Turnover given as per clause (E) of sub-rule (4) of Rule 89 and also referred sub-

section (112) of Section 2 of CGST Act, 2017. Further, the Department has referred the definition of Value of Taxable supply given in Section 15 of the CGST Act, 2017. Accordingly, by referring above provisions the department has concluded that *"from the combined reading of above provisions, it is clear that for calculating the Adjusted Total Turnover, the value of the zero rated supply of goods would be the invoice value as declared by the taxpayer in his returns for the relevant period and not FOB value"*. Thus, taking the higher value of Adjusted total turnover from GST Returns (Rs.1,63,87,811/- & Rs.1,86,01,366/-) and applying the same in formula for refund of export without payment of tax, the admissible refund comes Rs.14,27,231/- & Rs.12,40,001/- instead of Rs.16,47,184/- & Rs.13,55,984/- respectively, as sanctioned by the sanctioning authority. Thus, there is excess sanction of Refund of Rs.2,19,953/- & Rs.1,15,983/- to the claimant which is required to be recovered along with interest.

Period of Refund claim	Turnover of Zero rated supply (1)	Adjusted Total Turnover of supply as per Returns (2)	Net ITC (3)	Refund Amount Sanctioned (4)	Refund Amount Admissible (5) (1*3/2)	Excess Refund Amount sanctioned (6)
June'22	14199498	16387811	1647184	1647184	1427231	2,19,953
July'22	16115585	18601367	1431267	1355984	1240001	1,15,983

3. In view of above facts, the *Appellant/Department* has filed the present appeal on following grounds:

- *Adjudicating Authority has wrongly considered FOB value i.e. Rs.1,41,99,498/- & Rs.1,70,10,316/- as Adjusted Total Turnover instead of correct Adjusted Total Turnover (invoice value declared in returns) i.e. Rs.1,63,87,811/- & Rs.1,86,01,367/- respectively in the prescribed formula. This has resulted into sanction of excess refund of Rs.2,19,953/- & Rs.1,15,983/- respectively.*
- *While calculating Adjusted Total Turnover in present refund claims the Adjudicating Authority has considered Zero-Rated supply as mentioned in FOB (the claimant has made only zero rated supply during the given period of refund claim), however, the same should be total value/Invoice value of zero-rates supply declared in GST Returns.*
- *Also, for more clarity regarding calculation of Adjusted Total Turnover, it is pertinent to refer definition given in Rule 89 (4)(E) of CGST Rules, 2017 read with sub-section (112) of Section 2 of CGST Act, 2017 as well as Section 15 of the CGST Act, 2017*
- *From the combined reading of above provisions, it is clear that for calculating the Adjusted Total Turnover, the value of the zero rated supply*



- of goods would be the invoice value as declared by the taxpayer in his returns for the relevant period and not FOB value”.
- Rule 89(4) of the CGST Rules, 2017 prescribes the formula for computing the admissible amount of refund of unutilized ITC on account of zero rated supplies made without payment of tax. Same is reproduced as under :

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$
 - “Adjusted Total Turnover” has been defined in clause (E) of Rule 89(4) of CGST Rules, 2017 as under :
 (E) “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;**
 - “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”.
 - Further, para 8 of Notification No. 14/2022 – Central Tax dated 05.07.2022, in Rule 89, (c) in sub-rule (4) has been amended where the following Explanation has been inserted, namely :
 - Explanation. – For the purposes of this sub-rule, 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.”
 - Accordingly, applying formulae on correct value of Adjusted Total Turnover, the refund admissible comes Rs.14,27,231/- & Rs.12,40,001/- instead of Rs.16,47,184/- & 13,55,984/- respectively sanctioned by the sanctioning authority. Thus, there is excess sanction of refund of Rs.2,19,953/- & Rs.1,15,983/- to the claimant which is required to be recovered with interest.

In view of above, the appellant/department has made prayer as under:

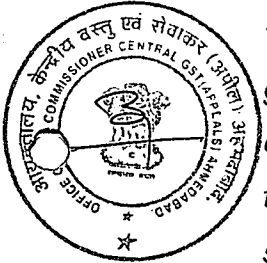
- i. To set aside the impugned orders, wherein adjudicating authority has erroneously sanctioned Rs.16,47,184/- & Rs.13,55,984/- instead of Rs.14,27,231/- & Rs.12,40,001/- respectively, under Section 54(3) of the CGST Act, 2017.
- ii. To pass an order directing the said original authority to recover and appropriate the amount erroneously refunded of **Rs.2,19,953/-** (1647184-1427231) & **Rs.1,15,983/-** (1355984-1240001) with interest.
- iii. To pass any other order(s) as deemed fit in the interest of justice.

4. Accordingly, in response to present appeals the Respondent has submitted Cross Objections in response to both the Appeals on dated 07.07.2023.

The Respondent in their aforesaid Cross Objections has referred Rule 89(4) of the CGST Rules, 2017 and Notification No. 14/2022-Central Tax dated 05.07.2022. The Respondent has also referred provisions of Section 2(112) and Section 16(1) of the CGST Act, 2017. The Respondent has mainly contended that -

- Considering the above, they have taken FOB value being lower than Invoice Value for value of goods exported in refund application and claimed the refunds.
- While re-calculating the refund, the department appellant, in the formula of rfuned under Rule 89(4) of CGST Rules, 2017, 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 good for arriving Total Adjusted Turnover. Therefore, authority has considered two different values for the same supply i.e., turnover of zero-rated supply of goods.
- Further, there would be no different criteria for value in numerator and denominator.
- Respondent places Reliance on the case of M/s. U square Life Science Pvt. Ltd.-OIA No. AHM-CGST-001-APP-ADC-156/2021-2022 Dated 28.03.2022 and M/s. Medisurg International - AHM-CGST-001-APP-ADC-92/2022-2023 Dated 26.08.2022.

In view of above submissions, the Respondent has made prayer to set aside the appeal filed by the department appellant and allow the refund of Rs. 16,47,184/- and 13,55,984/- duly sanctioned by the authority in RFD-06, and drop the contention of appellant to reject the refund of Rs. 2,19,953/- and 1,15,983/-.



5. Personal hearing in the present matter was held on dated 12.07.2023, wherein Mr. Mr. Sourabh Singhal, CA appeared on behalf of the *Respondent* as authorised representative. During PH he has submitted 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). The departments contention that for denominator (i.e. total adjusted invoice valued should be taken contrary to the Rule 89(4), then not sustainable.

Further in cases of goods under concessional rate i.e. 0.1% (0/05% SGST and 0/05%), Provision of 89(4B) are attracted, and of 89(4), therefore department appeal is liable for rejection.

Discussion and Findings:

6. I have carefully gone through the facts of the case, grounds of appeals, submissions made by the *Respondent* and documents available on record. I find that in the present case, appeals are filed against *impugned orders* wherein refund of accumulated ITC due to export without payment of tax amounting to Rs.16,47,184/- & Rs.13,55,984/- were sanctioned. The *appellant/department* in both the present appeals mainly contended that the Adjusted Total Turnover is the "sum total of the value of the turnover in a state or a Union territory, as defined under clause 112 of Section 2 of the CGST Act, 2017" i.e. inclusive of Zero Rated supplies and Local supplies and the *adjudicating authority* has considered value of zero rated supplies as per FOB Value instead of Invoice Value; accordingly, granted excess amount of refunds of Rs.2,19,853/- & Rs.1,15,983/- to the *Respondent*.

7. I 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.

9. Further, I find that *Appellant/Department* has referred the Notification No. 14/2022-Central Tax dated 05.07.2022 issued by the CBIC in the present appeal proceedings. The relevant portion of Notification is reproduced as under :

G.S.R... (E). –In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

8. In the said rules, in rule 89, –

(c) in sub-rule (4), the following Explanation shall be inserted, namely:

–“Explanation. – For the purposes of this sub-rule, 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 present matter I find that the *Respondent* has considered the FOB value for the Zero rated Turnover in the RFD-01 i.e. refund applications being the lesser value and the *department/appellant* is not disputing about the same in the present appeal. However, the department is disputing about the value of adjusted total turnover only.

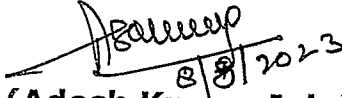
10. In view of above facts of the case, submissions made by Respondent and discussion made herein above, I hold that the adjudicating authority has rightly considered the turnover of zero rated supply of goods based on FOB Value being lower value in accordance with the Notification No. 14/2022-CT dated 05.07.2022. Further, the adjudicating authority has also rightly considered the same value in adjusted total turnover for zero rated supplies in accordance with Circular No. 147/03/2021-GST dated 12.03.2021. Further, the Respondent has contended in the present matters that this appellate authority has taken similar view in favour of Respondent and produced copy of OIA No. AHM-CGST-001-APP-ADC-23/2023-24 dated 30.05.2023.

11. 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 order for recovery of erroneous/excess refund sanctioned to the

Respondent on the grounds mentioned in appeals. 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/department* stands disposed of in above terms.


 (Adesh Kumar Jain)
 Joint Commissioner (Appeals)

Date: 08.08.2023

Attested


 (Sandheer Kumar)
 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 & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File