



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20230864SW0000999A8B

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/79/2023 -APPEAL /ussl 56
ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-90/2023-24**
दिनांक Date : **10-8-2023** 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. **ZH2409220002478 DT. 31.08.2022** issued by The Assistant Commissioner, CGST, Division-V, Ahmedabad South

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

Appellant	Respondent
The Assistant Commissioner, CGST, Division-V, Ahmedabad South	M/s. Elegant Vinyl Private Limited, GSTIN:24AAECE0590J2ZP, Survey No. 688/C and 688/B Paiki no Land, Kubadthal Road, Kubadthal, Daskroi, Ahmedabad-382430

(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 Deputy Commissioner, CGST, Division V, Ahmedabad South (hereinafter referred to as the 'Appellant/Department') in terms of Review Order No. 68/2022-23 dated 31.08.2022 issued under Section 107 of the CGST Act, 2017, has filed the present appeal offline in terms of Advisory No.9/2020 dated 24.09.2020 issued by the Additional Director General (Systems), Bengaluru. The appeal is filed against Order No. ZH2409220002478 dated 31.08.2022 (hereinafter referred to as the *Impugned Order*) passed in Form-GST-RFD-06 by the Assistant Commissioner, CGST, Division V, Ahmedabad South (hereinafter referred to as the *Adjudicating Authority*) sanctioning refund to **M/s. Elegant Vinyl Private Limited**, Survey No. 688/C and 688/B Paiki No Land, Kubadthal Road, Kubadthal, Daskroi, Ahmedabad 382430 (hereinafter referred to as the 'Respondent').

2. Briefly stated the facts of the case is that the *Respondent* registered under GSTN No.24AAECE0590J2ZP had filed a refund claim of Rs.63,73,071/- for refund of ITC accumulated due to Inverted Tax Structure vide ARN No. AA240822011366J dated 03.08.2022 for the period of April 2022 to June 2022 Under Section 54 (3) of the CGST Act, 2017. After verification of the refund claim the *adjudicating authority* found the claim in order and accordingly sanctioned the said refund claim to the *Respondent* vide *impugned order*.

During Review of the 'Impugned Order' dated 31.08.2022 the department has observed as under :

- *The claimant has shown supply made under zero rated (export without payment). The same supply should be included in the Adjusted Total Turnover for the refund claim period.*
- *During review of refund claim it was observed that the claimant has filed refund claim on account of ITC accumulated due to Inverted Tax Structure for the period April 2022 to June 2022; and the said claim is sanctioned by the adjudicating authority vide Order No. ZH2409220002478 dated 31.08.2022 in the form of GST-RFD-06. However, on going through the refund claim, it is noticed that higher amount of refund has been sanctioned to the claimant that what is actually admissible to them in accordance with the Rule 89 (5) of CGST Rules, 2017 read with Section 54 (3) of CGST Act, 2017.*

- Further, appellant/department has noticed that the claimant has shown the Adjusted Total Turnover and Inverted Turnover as Rs. 17,05,46,708/- and Rs. 16,40,04,402/- respectively for the said period, whereas on perusal of the GSTR1 & 3B returns for the said period of April 2022 to June 2022, it is noticed that the actual Adjusted Total Turnover and Inverted Turnover is Rs. 18,99,00,600/- and Rs. 16,40,04,402/- respectively. Thus, taking the actual value of Adjusted Total Turnover applying the formula for refund of ITC accumulated due to Inverted Tax Structure, the refund admissible comes to Rs. 37,18,164/- instead of Rs. 63,73,071/- sanctioned by the adjudicating authority. Thus, there is excess sanction of refund of Rs. 26,54,907/- to the claimant which is required to be recovered alongwith interest and penalty as the claimant has shown wrong Adjusted Total Turnover.
- Hence, found that the said refund sanctioned is not proper and legal.
- Thus, by taking correct value of "Turnover of inverted rated supply of goods and services" and "tax payable on such inverted rated supply of goods and services" and also Net ITC as narrated above, the amount of refund which is available to the claimant as per Rule 89(5) of the CGST Rule, 2017 has been calculated for the month of April 2022 to June 2022 by the department as under :

(Amount in Rs.)

Inverted turnover rated (1)	Tax Payable on such inverted rated supply (2)	Adjusted Total Turnover as per GSTR 1 (3)	Net ITC (4)	Refund Amount claimed & sanctioned (5)	Refund Amt. Admissible = (1*4/3)-2] (6)	Excess Refund Amount Sanctioned (5-6) (7)
16,40,04,402/-	1,96,76,902/-	18,99,00,600/-	2,70,89,133/-	63,73,071/-	37,18,164/-	26,54,907/-

In view of above, the department has considered that excess amount of refund has been sanctioned to the claimant. Accordingly, the department is of the view that the said excess amount of erroneous refund of Rs.26,54,907/- is required to be recover along with interest and penalty as the claimant has shown wrong Adjusted Total Turnover.

3. CROSS EXAMINATION FILED BY RESPONDENT:

The respondent filed their cross examination vide letter dated 17.07.2023 wherein they inter-alia contended as under:

- Earlier also the department had filed an appeal against them for the refund received by them and the ground of the appeal was the calculation of Adjusted Total Turnover, as they had not considered the Export turnover under LUT as it was under Advance License or EPCG as per their interpretation of Rule 89(4A) &

89(4B). They further stated in their said letter that if the current appeal filed by the Department is related to the same grounds of Appeal of calculation of Adjusted Total Turnover then, they are ready to pay on this ground.

The respondent again filed their cross examination vide letter dated 31.07.2023 wherein they inter-alia contended as under:

- "As per the Appeal filed by the Department the excess refund received by the assessee is Rs. 26,54,907/- the calculation of which is as follows":

Inverted rated turnover (1)	Tax Payable on such inverted rated supply (2)	Adjusted Total Turnover as per GSTR 1 (3)	Net ITC (4)	Refund Amount claimed & sanctioned (5)	Refund Amt. Admissible $= (1 \times 4/3) - 2$ (6)	Excess Refund Amount Sanctioned (5-6) (7)
16,40,04,402/-	1,96,76,902/-	18,99,00,600/-	2,70,89,133/-	63,73,071/-	37,18,164/-	26,54,907/-

- "As per department calculation the Adjusted Total Turnover is Rs. 18,99,00,600/-. However total turnover as per GSTR1 & 3B filed by the assessee is Rs. 18,81,29,385. Also as entire turnover has been shown in the monthly returns, the same is the Adjusted Total Turnover. The eligible refund and excess refund claimed after taking the Adjusted Total Turnover of Rs. 18,81,29,385/- is as follows:"

(Amount in Rs.)

Inverted rated turnover (1)	Tax Payable on such inverted rated supply (2)	Adjusted Total Turnover as per GSTR 1 (3)	Net ITC (4)	Refund Amount claimed & sanctioned (5)	Refund Amt. Admissible $= (1 \times 4/3) - 2$ (6)	Excess Refund Amount Sanctioned (5-6) (7)
16,40,04,402/-	1,96,76,902/-	18,99,00,600/-	2,70,89,133/-	63,73,071/-	39,38,426/-	24,34,645/-

The Respondent vide letter dated 31.07.2023, has further stated that as per their calculation the excess refund claimed by the them is Rs.24,34,645, which they agrees to pay alongwith interest.

Personal Hearing:

4. The Personal Hearings in the matter were scheduled on 11.07.2023 and on 18.07.2023, wherein Mr. Mohit Gupta, C.A. appeared on behalf of the 'Appellant' as authorized representative. In response to said Personal Hearing, the authorized representative has reiterated the written submission, produced during Personal Hearing. He further submitted that for the pass period they have paid back the excess refered on the ground that they have not considered the value of LUT export in total adjusted turnover and if ground is same, they are ready to pay on this ground.

Discussion and Findings :

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the *respondent* and documents available on record. I find that the present appeal was filed to set aside the *impugned order* on the ground that the *adjudicating authority* has sanctioned excess refund to the *respondent* and to order recovery of the same along with interest and penalty.

6. The grounds in appeal is that the *adjudicating authority* has erred in passing the refund order, as higher amount of refund has been sanctioned to the claimant than what is actually admissible to them in accordance with the Rule 89(5) of the CGST Rules, 2017 read with Section 54(3) of the CGST Act 2017.

- That the claimant has shown the Adjusted Total Turnover as Rs. 17,05,46,708/- for the said period, whereas on perusal of the GSTR1 & 3B returns for the said period of April 2022 to June 2022, it is noticed that the actual Adjusted Total Turnover is Rs. 18,99,00,600/-.
- That the claimant has declared Outward taxable supplies (other than zero rated, nil rated and exempted) value in GSTR 3B returns for the period April 2022 to June 2022 as Rs. 17,05,46,708/- and the same has been taken as the Adjusted Total Turnover in the refund claim. Further, the Outward taxable supplies (zero rated) has not been included in the Adjusted Total Turnover; however, both Outward taxable supplies (other than zero rated, nil rated and exempted) and Outward taxable supplies (zero rated) should be included in the refund calculation as Adjusted Total Turnover.

That the *adjudicating authority* has erred in passing the refund order, as higher amount of refund has been sanctioned to the claimant by taking lower value of Adjusted Total Turnover; thereby excess refund amounting to Rs. 26,54,907/- has been given; which is required to be recovered alongwith interest and penalty.

7. In this regard, I find that the claimant has shown the Adjusted Total Turnover and Inverted Turnover as Rs. 17,05,46,708/- and Rs. 16,40,04,402/- respectively for the period of April 2022 to June 2022, whereas for the said, appellant/department has considered the actual Adjusted Total Turnover and Inverted Turnover is Rs. 18,99,00,600/- and Rs. 16,40,04,402/- respectively. Thus, appellant/department has taken the value of Adjusted Total Turnover applying the formula for refund of ITC accumulated due to Inverted Tax Structure, the refund admissible comes to Rs. 37,18,164/- instead of Rs. 63,73,071/- sanctioned by the *adjudicating authority*. Thus, there is excess sanction of refund of Rs. 26,54,907/- to the claimant. .

8. Accordingly, I find that in the present case the Respondent has not included the Outward taxable supplies (zero rated) in the Adjusted Total Turnover. However, both Outward taxable supplies (other than zero rated, nil rated and exempted) and Outward taxable supplies (zero rated) should be included in the refund calculation as Adjusted Total Turnover.

In this regard I refer to para 4 of Circular NO.147/03/2021-GST dated 12-3-2021 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.

9. The respondent filed their cross examination vide letter dated 17.07.2023 wherein they inter-alia contended as under:

"earlier also the department had filed an appeal against them for the refund received by them and the ground of the appeal was the calculation of Adjusted Total Turnover, as they had not considered the Export turnover under LUT as it was under Advance License or EPCG as per their interpretation of Rule 89(4A) & 89(4B). They further stated in their said letter that if the current appeal filed by the Department is related the same grounds of Appeal of calculation of Adjusted Total Turnover then, they are ready to pay on this ground".

The respondent again filed their cross examination vide letter dated 31.07.2023 wherein they inter-alia contended as under:

- "As per the Appeal filed by the Department the excess refund received by the assessee is Rs. 26,54,907/- the calculation of which is as follows":

Inverted rated turnover (1)	Tax Payable on such inverted rated supply (2)	Adjusted Total Turnover as per GSTR 1 (3)	Net ITC (4)	Refund Amount claimed & sanctioned (5)	Refund Amt. Admissible =(1*4/3)-2] (6)	Excess Refund Amount Sanctioned (5-6) (7)
16,40,04,402/-	1,96,76,902/-	18,99,00,600/-	2,70,89,133/-	63,73,071/-	37,18,164/-	26,54,907/-

- "As per department calculation the Adjusted Total Turnover is Rs. 18,99,00,600/-. However total turnover as per GSTR1 & 3B filed by the

assessee is Rs. 18,81,29,385. Also as entire turnover has been shown in the monthly returns, the same is the Adjusted Total Turnover. The eligible refund and excess refund claimed after taking the Adjusted Total Turnover of Rs. 18,81,29,385/- is as follows:"

(Amount in Rs.)

Inverted rated turnover (1)	Tax Payable on such inverted rated supply (2)	Adjusted Total Turnover as per GSTR 1 (3)	Net ITC (4)	Refund Amount claimed & sanctioned (5)	Refund Amt. Admissible $=(1*4/3)-2]$ (6)	Excess Refund Amount Sanctioned (5-6) (7)
16,40,04,402/-	1,96,76,902/-	18,81,29,385/-	2,70,89,133/-	63,73,071/-	39,38,426/-	24,34,645/-

- **The Respondent vide letter dated 31.07.2023, has further stated that as per their calculation the excess refund claimed by the them is Rs.24,34,645, which they agrees to pay the same alongwith interest.**

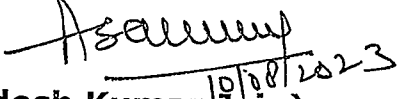
Therefore, I find that the Respondent has accepted the view of the Department in principle and agreed to pay Rs. 24,34,645/- alongwith interest. However there is disagreement as regards the calculation which needs verification for the difference amount of Rs. 2,20,262 (Rs. 26,54,907 – Rs. 24,34,645).

10. In this regard, I find that the claimant has wrongly taken the Adjusted Total Turnover of Rs. 17,05,46,708/- by not taking into account the value of zero rated supply, while calculating "Maximum Refund Amount". Further after considering total turnover as per GSTR1 & 3B filed by the assessee, the Adjusted Total Turnover is comes to Rs. 18,81,29,385. Thus, I find that the refund sanctioning authority have erred in calculating the value of Adjusted Total Turnover, while calculating "Maximum Refund Amount". The total Adjusted Total Turnover as per GSTR1 & 3B filed by the assessee is Rs. 18,81,29,385. Further, I find that the Respondent vide letter dated 31.07.2023, has also accepted that as per their calculation they have claimed the excess refund amount of Rs.24,34,645, which they agrees to pay the same alongwith interest.

11. In view of above, I allow the appeal filed by the "Appellant/Department" and direct the Refund Sanctioning Authority to recover Rs. 24,34,645/- alongwith interest, forth with. As regards the calculation mistake, the difference amount of Rs. 2,20,262/-, the Respondent is directed to

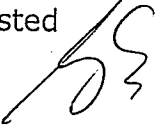
submit all relevant documents within 60 days before Refund Sanctioning Authority, who shall verify the documents and recover the erroneous amount of refund, paid if any, along with interest applicable under Section 50 of CGST Act 2017.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The Appeal filed by 'Department' stand disposed off in above terms.


(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: /08.2023

Attested


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

By R.P.A.D.

M/s. Elegant Vinyl Private Limited,
Survey No. 688/C and 688/B Paiki No Land,
Kubadthal Road, Kubadthal,
Daskroi, Ahmedabad 382430.

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-V, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

