



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: 20230864SW00002252EA

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/827/2023 -APPEAL / नूंस - 93ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-97/2023-24**  
दिनांक Date : **22.08.2023** जारी करने की तारीख Date of Issue : **24-08-2023**

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 **ZL2402230052827 DT. 04.02.2023** passed by The Assistant commissioner, CGST, Division-VIII, Ahmedabad South

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

Appellant	Respondent
M/s. U Square Life Science Private Limited, (GSTIN:24AAACU8986A1Z9) A-1101, A-1102, A-1103, Solitaire Corporate Park, Beside Divya Bhaskar Press, S.G. Highway, Sarkhej-380051	The Assistant commissioner, CGST, Division-VIII, 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



**ORDER-IN-APPEAL****Brief Facts of the Case :**

**M/s. U Square Lifescience Private Limited**, A 1101-03, Solitaire Corporate Park, Beside Divya Bhaskar Press, S. G. Highway, Sarkhej, Ahmedabad 380 051 (hereinafter referred to as '*the appellant*') has filed the following appeal against the Refund Sanction/Rejection Orders (hereinafter referred as '*Impugned Orders*') passed by the Assistant Commissioner, CGST, Division - VIII, Ahmedabad South (hereinafter referred as '*Adjudicating Authority*').

Appeal Nos. / Date of appeal filed	RFD-06 Order Nos./ Date ( <i>'Impugned Orders'</i> )	Amount of Refund Rejected	Refund Claim period
GAPPL/ADC/GSTP/827/2023 / 09.02.2023	ZL2402230052827 / 04.02.23	Rs.2,73,619/-	Aug.'22 to Oct'22.

2. Briefly stated the fact of the case is that the appellant registered under GSTIN24AAACU8986A1Z9 has filed the following refund claim for refund of ITC on account of export of goods & services without payment of tax :

ARN No. and Date	Period	Refund Claimed	Refund Sanctioned
AA241222019093V / 07.12.2022	Aug.'22 to Oct'22.	Rs.42,51,396/-	Rs.39,77,777/-

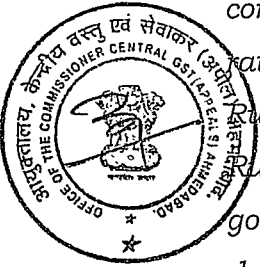
In response to above refund application, Show Cause Notices under Form-RFD-08 were issued to the appellant vide which it was proposed that the refund application is liable to be rejected for the reasons "*Other*". The details are as under :

SCN No. / Date	Period	Amount Inadmissible	Remark
ZL2401230270504 / 22.01.2023	Aug.'22 to Oct'22.	Rs.2,73,619/-	(i) " <i>The claimant has considered adjusted turnover amounting to Rs.4,34,38,402/- instead of Rs.4,61,42,173/- as per GSTR3B for the relevant period. Therefore, the maximum admissible refund comes to Rs.38,94,035/- only</i> " (ii) " <i>The claimant has considered Net ITC amounting to Rs.43,74,627/- instead of Rs.42,02,785/- as per GSTR-3B for the relevant period.</i> "

The adjudicating authority has referred the para 47 of Circular No. 125/44/2019-GST dated 18.11.2019 and clause (c) of para 8 of the Notification No. 14/2022-Central Tax and sanctioned the refund of Rs.39,77,777/- in respect of aforesaid refund application and thereby rejected refund claims of Rs.2,73,619/-.

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

- The impugned orders confirming rejection on the ground that FOB value is to be considered as zero rated turnover and that too only in numerator, ignoring the provisions of Rule 89 of the CGST Rules / SGST Rules and Board Circulars and without reference to any of the provisions of Law is void-ab-initio and liable to be set aside to the extent of rejection of refund claims;
- The impugned OIO confirming rejection of refund proposed in the SCN on the ground that the ITC taken in GSTR 3B ignoring the provisions of the Central Goods and Services Tax Act, 2017 (CGST Act)/ The State Goods and Services Tax Act, 2017 (SGST Act) and Board Circulars and without reference to any provision of the law is void-ab-initio and the impugned OIO is liable to be set aside to the extent rejecting the refund claim.
- That the impugned orders were passed without providing opportunity of being heard and without following the principles of natural justice ;
- They have rightly considered FOB value declared in the Shipping Bills for computing turnover of zero-rated supply as per the order of Appellate Authority in their own matter, which is also in compliance with the explanation to Rule 89(4) of the CGST Rules and the SCNs has also not raised any objection in this regard.
- However, while computing the adjusted total turnover, impugned OIOs has confirmed the computation proposed in the SCNs wherein the value of zero-rated supply as per GSTR 3B has been taken ignoring the explanation to Rule 89(4) wherein it has been made amply clear that for the purpose of Rule 89(4), the value of goods exported out of India i.e. Zero rated supply of goods should be considered as FOB value as per Shipping Bill or value declared in tax invoice whichever is less.
- Accordingly, the value of goods exported out of India for computing the adjusted total turnover is to be considered as per explanation i.e. FOB value as declared in shipping bill or value declared in tax invoice, whichever is less.
- Further, impugned OIOs has also failed to appreciate the Board Circular No. 147/03/2021-GST dated 12.03.2021 which has clarified that in the formula of Rule 89(4), the value of zero-rated supply in numerator and denominator should be the same and cannot be different, and has simply disallowed the refund claims based on allegation that turnover mentioned in GSTR 3B is not considered while computing adjusted total turnover. The impugned OIOs has not appreciated the fact that export turnover in GSTR 3B is reported as per export invoice wherein valuation arrived is as per Section 15 of the CGST Act/SGST Act whereas for computing the refund

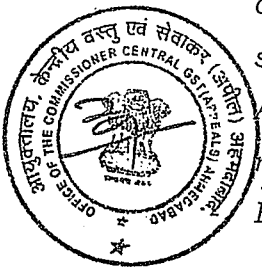


under Rule 89(4), the value of goods exported out of India is to be taken as per the explanation which is FOB value as per shipping bill or value declared in the tax invoice whichever is less.

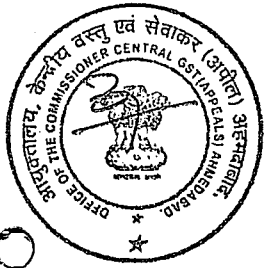
- That the value of zero rated supply to be considered in numerator and denominator as mentioned in the formula prescribed under Rule 89 (4) should be same and there cannot be different criteria for computing numerator and denominator and value of export/zero rated supply of goods to be included while 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; the impugned OIOs are conspicuously silent on this and has not even made an attempt to provide the reason for not considering the adjusted turnover as per explanation to Rule 89(4) and clarification provided in the above Circular and has simply rejected the refund claims ;
- that the FOB value considered for computing the adjusted total turnover in the refund applications are correct and in compliance with the provisions of GST legislation and the impugned OIOs are liable to be set aside on this count also.
- Issue of method of computation of adjusted turnover has already been settled by the Appellate Authority in their own matter having OIA No. AHM0CGST-001-APP-ADC-156/2021-22 dated 28.03.2022 wherein, it has been held that value of zero-rated supply at numerator and turnover value of zero-rated supply in total adjusted turnover at denominator will be same. When matter has been adjudicated by a competent Appellate Authority, issuance of SCN on the same issue is against the principle of res-judicata.

Referred following case laws :

- o Commissioner of Customs, Kandla Vs. ABM International Ltd. [2015 (322) ELT 818 (SC)]
  - o UOI and Ors. Vs. Kamlakshi Finance Corporation Limited [1992 Supp (1) SCC 443 = 1991 (55) ELT 433 (SC)]
  - o Commissioner Vs. Prem Steels Ltd.[2015 (322) ELT A37 (SC)]
  - o Topchem India Vs. UOI [2021 (376) ELT 573 (Guj)]
  - Board Circular are binding on the department, accordingly referred various case laws in this regard.
  - The SCNs has not referred to any of the provision of the CGST Act, IGST Act or SGST Act while proposing to reject the refund claims, rendering the SCNs as vague and the SCNs are liable to be set aside on this count.
- Referred case of
- o SBI Capital Markets Ltd. Vs. CCEX & ST (LTU), Mumbai [2016 (41) STR 76 (Tri. Mumbai)]



- o *Indian Oil Corporation Ltd. Vs CCE, Chennai [2016 (343) ELT 405 (Tri. Chennai)];*
- o *Appellant humbly wish to submit that impugned O10 has confirmed the reduction of ITC based on allegation made in the SCN that ITC taken by the Appellant is not for relevant period is without any basis of provisions of the law and the same is liable to be quashed on this ground alone;*
- o *That ITC can be taken any time after complying with the conditions of section 16. Further such ITC can also be taken in subsequent tax periods upto November of next financial year or filing of annual return, whichever is earlier;*
- o *They have rightly taken ITC in GSTR 3B of August 2022 to October 2022 of invoices which are dated prior to August 2022 on the basis of such invoices appearing in GSTR 2B in accordance with restrictions prescribed in the CGST Act/ SGST Act. Rule 36(4) vide Notification No. 49/2019-CT dated 09-10-2019. They are bound to follow the Rule 36(4) vide Notification No. 49/2019-CT dated 09-10-2019 circular and they have only followed the circular as mandated. By disallowing the amount for following the circular, the department or the concerned officer has raised a question mark against their own circular;*
- o *that the ITC taken by them is also in accordance with provisions of section 16 of the GST Act and the same is also clarified in the above referred para of Board Circular No. 125/44/2019-GST dated 18-11-2019 and the same is rightly considered as Net ITC under Rule 89 while computing the refund for August 2022 to October 2022.*
- o *that they have taken ITC in GSTR-3B of August 2022 to October 2022, on the basis of invoices appearing in GSTR 2A/ 2B, in accordance with the provisions of section 16 of the GST Act so as to comply with the restrictions made applicable vide Rule 36(4) of the GST Rules inserted vide Notification No. 49/2019-CT dated 09-10-2019.*



In view of above submissions the appellant pray -

- *to set aside the impugned orders to the extent upholding the disallowance of refund claims and requested to hold that -*
- *the turnover of value of zero-rated supply of goods at numerator and turnover value of zero-rated supply in total adjusted turnover at denominator will be same*
- *that the appellant has rightly taken FOB value for computing value of zero-rated supply in numerator and denominator as per the newly inserted explanation to Rule 89(4)*

- Refund amount should be computed on the basis of statutory formula prescribed under Rule 89
- ITC taken in GSTR 3B is Net ITC as per Rule 89 already defined and in practice.
- Refund claimed by the Appellant is correct and should be approved
- Board Circular are binding to the department and the refund claim should be processed on the basis of Board Circulars and the same cannot be followed partially chosen as per wishes of the adjudicating authority.
- Appellant places reliance on the following case laws
  - ▶ Collector of Central Excise, Vadodara vs. Dhiren Chemical Industries 2002 [(143) E.L.T. 19 (S.C.)]
  - ▶ Biyani Alloy Private Limited (Before the Government of India, Ministry of Finance) [2012 (286) ELT 445 (G.O.1.)]
  - ▶ UOI vs. Madras Steel Re-Rollers Association [2012 (278) ELT 584 (S.C.)]
  - ▶ Commissioner of C.Ex. & Cus, Daman vs. Wockhardt Limited [2009 (241) ELT 114 (Tri. - Ahmd.)]
  - ▶ Ambuja Cements Limited vs. Union of India [2009 (236) ELT 431 (P&H)]
  - ▶ Commissioner of C.Ex., Jaipur vs. Indian Shaving Products Limited [2002 (144) ELT 650 (Tri.- Del.)] O
  - ▶ Paper Products Limited vs. CCE [1999 (112) ELT 765 (SC)]
  - ▶ MTR Distributors Private Limited vs. CCE, Bangalore [1999 (113) ELT 708 (Tribunal)]
- they humbly wish to submit that the impugned order has been passed without considering the facts and without giving any justification is therefore non-speaking order and is liable to set aside to the extent disallowing the claim of refund;
- Further impugned O10 has grossly ignored the principles laid down in the OIA issued in the identical matter of the Appellant and simply confirmed the rejection proposed in the SCN.

#### **Personal hearing:-**

4. Personal hearing was held on dated 12.07.2023. Shri Gopal Krishna Laddha, authorized representative appeared on behalf of appellant. He stated that as per Rule 89(4) value of export in numerator and denominator should be same but the Ld. Adjudicating Authority has taken different value of export which is not legal and proper and not in conformity to the provisions of Rule 89(4). Further he stated that Ld. Adjudicating Authority has also not considered the ITC availed during the relevant period as per Rule 36(4) and reduced the refund amount to this extent, which is also not proper and legal. He further stated that CBIC has clarified the issue

vide circular No. 125/44 dated 18.11.2019. But the Ld. Adjudicating Authority has erred in following the clarification which is binding of department. Further requested to allow appeal.

**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 appeals is filed against impugned order wherein the refunds amounting to Rs.2,73,619 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 as well as Notification No. 14/2022-Central Tax dated 14.07.2022 has taken the turnover of zero rated supply of goods, adjusted total turnover and Net ITC as under and arrived at the admissible refund :

Refund claim for period	Turnover of Zero rated supply (FOB Value which is lower value) (1)	Net ITC (2)	Adjusted Total Turnover (3)	Refund Amount sanctioned (1*3/4)
Aug.'22 to Oct'22	42752423	4293167	46142173	3977777

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 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.

Further, I find that as per Notification No. 14/2022-Central Tax dated 14.07.2022 in the matter of Rule 89(4), the **value of goods exported** out of India shall be taken as **-(i) the Free on Board (FOB) value** declared in the

*Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; **or (ii) the value declared in tax invoice or bill of supply, whichever is less.***

6. The aforesaid Circular No. 125/44/2019-GST dated 18.11.2019 and Notification No. 14/2022-CT dated 05.07.2022 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 and export value (FOB 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 cases the Appellant has taken FOB Value towards turnover of zero rated supply of goods as being lower than the Invoice Value and same value considered in Adjusted Total Turnover for zero rated supplies. Whereas, while calculating admissible amount of refunds the adjudicating authority in the present matters has considered the adjusted total turnover as per GSTR-3B in the prescribed formula.

7. Further, I find that the Appellant has further referred the CBIC Circular No. 147/03/2021-GST dated 12.03.2021 and contended that the same value (i.e. FOB Value) considered for zero rated turnover should be consider for the turnover of zero rated supply of goods in Adjusted Total Turnover also. Therefore, the adjudicating authority considered FOB Value in numerator and transaction value in denominator is completely incorrect and not proper. Accordingly, in view of above I also refer para 4 of CBIC Circular 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

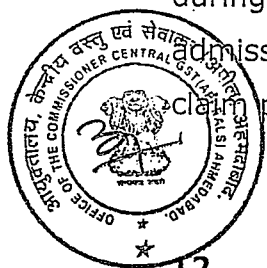
the formula prescribed under Rule 89 (4) of CGST Rules the value of zero rated turnover of goods i.e. value of export comes at numerator as well as in total adjusted turnover at denominator. In the present appeals, the value of zero rated turnover i.e. value of export was taken as FOB value as per shipping 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. In the subject case, the adjudicating authority has considered turnover value of zero rated supply at Rs.4,27,52,423/- being FOB value of export goods but considered adjusted total turnover as per value shown in GSTR3B returns i.e. Rs.4,61,42,173/-. 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 shown in GSTR3B returns.

10. I further find that the adjudicating authority has considered net ITC at Rs.42,93,167/- as against Net ITC of Rs.43,74,627/- taken by the appellant. The reason adopted by the adjudicating authority is that the as per Rule 89, ITC for the relevant period i.e. for the month of August 2022 to October 2022 only need to be considered for arriving Net ITC. On scrutiny of Annexure B filed with the claim I find that the appellant has availed ITC on invoices issued during the period prior to August 2022 to October 2022 but

the adjudicating authority has considered ITC availed under invoice issued during August 2022 to October 2022. In this regard I refer to definition of Net ITC and relevant period given under Rule 89 ( 4) as under: Rule 89 (4) (B) of CGST Rules, 2017 as amended (a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both (F) "Relevant period" means the period/or which the claim has been filed.

**11.** Concurrent reading of meaning assigned to Net ITC and relevant period leads to the expression that ITC means input tax credit availed on inputs during the period for which claim has been filed other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both. Thus, use of word 'availed' indicate that total credit taken on inputs during the claim period is to be taken under head ITC for determination of refund amount for that period. In other words the meaning of net ITC and relevant date allows all eligible input credit taken during the claim period irrespective of date and period of invoices for arriving Net ITC and for determining refund amount. Therefore so long as the credit is taken validly during the claim period in accordance with provisions of GST Law and found admissible it should be taken into account for determining refund for the claim period.



**12.** In this regard, I refer to Board vide Circular No. 125/44/2019- GST Dated the 18th November, 2019 wherein it was clarified as under:

*61. Presently, ITC is reflected in the electronic credit ledger on the basis of the amount availed on self-declaration basis in FORM GSTR-3B for a particular tax period. It may happen that the goods purchased against a particular tax invoice issued in a particular month, say August 2018, may be declared in the FORM GSTR-3B filed for a subsequent month, say September 2018. This is inevitable in cases where the supplier raises an invoice, say in August, 2018, and the goods reach the recipient's premises in September, 2018. Since GST law mandates that ITC can be availed only after the goods have been received, the recipient can only avail the ITC on such goods in the FORM GSTR-3B filed for the month of September, 2018. However, it has been reported that tax authorities are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September, 2018. In this regard, it is clarified that "Net ITC" as defined in rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period*

for which the refund claim has been filed. Input tax credit can be said to have been "availed" when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in FORM GSTR-3B. Further, section 16(4) of the CGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2019, "availed" in September, 2019 cannot be excluded from the calculation of the refund amount for the month of September, 2019.

**13.** The above clarification mandate the View that ITC availed during claim period on the strength of invoices issued during the past period cannot be excluded for calculation of refund amount for the claim period and should also be considered for determining refund amount. In the subject case, there is no dispute regarding admissibility of ITC availed during the claim period or ITC availed in question are not reflected in the GSTR 2A of the appellant and only dispute is that the credit taken during claim period include invoices issued during the prior period for which the appellant has not claimed refund. In this regard I find that as per meaning assigned to Net ITC and relevant date and also on the basis of clarification issued by Board vide Circular No. 125/44/2019- GST Dated the 18th November, 2019, there is no restriction under GST Law for availing ITC in a month on the strength of invoices issued prior to claim period, subject to all other provisions regarding availment of ITC are fulfilled. Therefore, I do not find any justification in excluding ITC of Rs.81,460/- on the reasoning given in the impugned order.

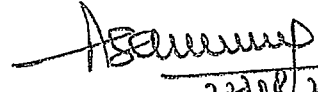
**14.** Further, in this case the turnover value of zero rated supply of goods taken as FOB value of export goods need to be taken in adjusted total turnover also and ITC availed on invoices issued during the prior period need to be taken into account for determining the admissible refund. Accordingly, in this case the admissible refund as per formula comes to Rs.42,51,396/-.

**15.** In view of above facts of the case, submissions made by Appellant 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 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 accordance with Circular No. 147/03/2021-GST dated 12.03.2021. Accordingly I hold that the adjudicating authority has wrongly arrived the admissible refunds at Rs.39,77,777/-, and rejected the refund claim amounting to Rs.2,73,619/-. Further, I find that the appellant in the present appeal proceedings contended that partial amount of refund claims rejected without being heard them. Therefore, I hold that the impugned orders passed by the adjudicating authority rejecting refunds as mentioned above is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned orders to the extent of rejection of refund claims of Rs.2,73,619/- and allow the appeal filed by the appellant to that extent only.

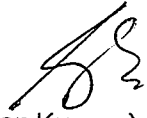
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

  
22/08/2023  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)

Date: 22.08.2023

Attested

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

By R.P.A.D.

M/s. U Square Lifescience Private Limited,  
A 1101-03, Solitaire Corporate Park,  
Beside Divya Bhaskar Press, S. G. Highway,  
Sarkhej, Ahmedabad 380 051

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



