



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: 20230864SW000000B232

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1257/2023 -APPEAL /11900-4905ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-98/2023-24**  
दिनांक Date : **23.08.2023** जारी करने की तारीख Date of Issue : **24-08-2023**

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

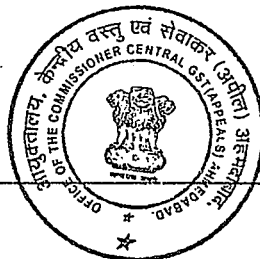
Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZM2412220243182 DT. 19.12.2022** 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. SK International (Legal Name: Sandip Kantilal Thakker), 52, Chimmanbhai Jivabhai Patel Market, APMC Yard, Vasna- Sarkhej Road, Ahmedabad-380055 (GSTIN 24AAVPT0321N1ZA)	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**

**M/s. S.K.International**, (Legal Name – Sandip Kantilal Thakker), 52, Chimanbhai Jivabhai Patel Market, APMC Yard, Vasna-Sarkhej Road, Ahmedabad – 380 055 (hereinafter referred as '**Appellant**') has filed the appeal against the Order (in Form RFD-06) bearing No. ZM2412220243182 dated 19.12.2022 (hereinafter referred as '**impugned order**') passed by the Assistant Commissioner, CGST, Range-II, Division-VIII-Vejalpur, Ahmedabad South (hereinafter referred as '**adjudicating authority**').

**2(i).** Briefly stated the facts of the case is that the '**Appellant**' holding GST Registration - GSTIN No.24AAVPT0321N1ZA had filed the refund application under category "*Export of Goods/Services without payment of Tax (Accumulated ITC)*" under ARN No. AA241122108554R dated 29.11.2022 for Rs.31,73,970/- for the period of April 2021 to March 2022. The '**Adjudicating Authority**' vide '**Impugned Order**' sanctioned the refund of Rs.26,41,011/- to the **Appellant** and rejected the refund claim of Rs.5,32,959/-. The reason for rejecting refund claim as mentioned in the **impugned order** are as under :

- The calculation given by the applicant in respect of export/zero rated turnover, adjusted aggregate turnover is incorrect as mentioned in the SCN.
- As per advisory issued by the Additional Commissioner, CGST, Ahmedabad South, it is clearly mentioned that "While Calculating Adjusted Turnover, Invoice Value or FOB value whichever is higher has to be taken".
- Claimant has correctly taken zero rated supply as per para 47 of the Circular No. 125/44/2019-GST but the claimant has not considered adjusted turnover correctly.
- The claimant is eligible for the Turnover of Zero rated supply of Goods and Services amounting Rs. 37,50,31,738/- and Adjusted Turnover of Rs. 47,04,81,142/- for the purpose of calculation of refund claimed.
- In view of above, admissible refund amount calculated as under :
- Refund admissible as per formula =  $\frac{\text{Turnover of Zero Rated} * \text{Net ITC}}{\text{Total Adjusted Turnover}}$   
 $= \frac{37,50,31,786 * 33,13,175}{47,04,81,142}$   
 $= \text{Rs.26,41,011/-}$

**2(ii).** Being aggrieved with the *impugned order* dated 19.12.2022 the 'Appellant' has filed the present appeal online on dated 18.03.2023 on the following grounds:

- They have claimed refund of Rs. 31,73,970/- as per sub rule 4 of rule 89 of CGST Rules, 2017;
- Further the value of turnover of zero-rated supply of goods and net ITC calculated by the appellant has been accepted by the GST officer however the opinion of GST officer regarding the calculation of adjusted total turnover is different from the opinion of appellant.
- The GST officer has considered the FOB value as declared in shipping bill in calculation of turnover of zero-rated supply of goods and the invoice value in calculation of adjusted total turnover and because of this the adjusted total turnover has been increased to Rs. 47,04,81,142/- from Rs. 37,60,24,734/- and consequently the refund amount of Rs. 5,32,959/- has been rejected which is not correct as there cannot be different base for numerator and denominator for the same value.
- the base taken by him of explanation inserted through notification no. 14/2022 w.e.f. 5-7-2022 under sub rule 4 of rule 89 of CGST Rules, 2017, for calculation of adjusted total turnover is more clearly evident than the base taken by the GST officer in para no. 18.1 of refund order since the notification mentioned above issued by the central government to amend the rules has overriding effect on the circular issued to make the clarification.
- In addition to this, it is nowhere mentioned in the para 47 of Circular No. 125/44/22019-GST dated 18-11-2019 that the FOB value is to be considered as value of zero-rated supply of goods rather it mentions to compare invoice value with the shipping bill value which might be varied due to change in exchange rate as and when goods removed from the assessee premises and which filling Shipping Bill. However, the explanation inserted through notification no. 14/2022 w.e.f. 5-7-2022 under sub rule 4 of rule 89 of CGST Rules, 2017 clearly mentions to consider the value of goods exported out of India as the lower of "the FOB value declared in shipping bill" or "the value declared in tax invoice or bill of supply".
- The relevant extracts of para 4 of circular no. 147/03/2021 dated 12.03.2021 are as under:



*The manner of calculation of Adjusted Total Turnover under  
Sub rule (4) of Rule 89 of CGST Rules. 2017.*

- 4.1).....  
4.2).....  
4.3).....  
4.4) .....

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.

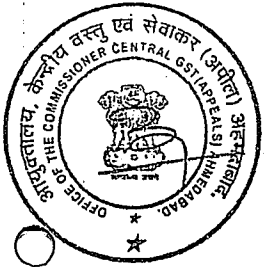
2(iii). During personal hearing the authorized representatives of the 'Appellant' had submitted the additional submission and stated that:

- CBIC has issued a circular no. 197/09/2023-GST dated 17.07.2023 in relation to refund related issued and its clarification which is applicable in this case, is reproduced as under:  
Para 3
- 3. Manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules consequent to Explanation inserted in sub-rule (4) of Rule 89 vide Notification No. 14/2022- CT, dated 05.07.2022.

- 3.1 Doubts have been raised as regarding calculation of "adjusted total turnover" under sub-rule (4) of rule 89 of CGST Rules, in view of insertion of Explanation in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022-Central Tax dated 05.07.2022. Clarification is being sought as to whether value of goods exported out of India has to be considered as per Explanation under sub-rule (4) of rule 89 of CGST Rules for the purpose of calculation of "adjusted total turnover" in the formula under the said sub-rule.
- 3.2 In this regard, it is mentioned that consequent to amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dated 23.03.2020, Circular 147/03/2021-GST dated 12.03.2021 was issued which inter alia clarified 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", needs 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.
- 3.3 On similar lines, it is clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, the value of goods exported out of India to be included while calculating "adjusted total turnover" will be same as being determined as per the Explanation inserted in the said sub-rule.

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

*Refund rejected by the Authority amounting Rs. 5,32,959/- may please be granted to them as refund.*



### **Personal Hearing:**

3. Personal Hearing in the matter was held on 27.07.2023 and 17.08.2023 wherein Mr. Meet Jadawala, C.A. was appeared on behalf of the 'Appellant' as authorized representatives. During PH they have stated that the issue has already been clarified vide circular No. 197/09/2023 dated 17.07.2023, that the same value of export should be taken for the formula while calculating the refund i.e. in numerator as well denominator. In view of above the appeal may be allowed. He further submitted additional submission and reiterated the same.

**Discussion and Findings :**

4(i). I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that in this case appeal was filed against impugned order wherein the refund amounting to Rs.5,32,959/- was held inadmissible and rejected by the adjudicating authority. I further notice that the adjudicating authority referring to para 47 of the Circular No. 125/44/2019-GST dated 18.11.2019 has taken the turnover of zero rated supply of goods at Rs.37,50,31,786/-; adjusted total turnover at Rs.47,04,81,142/- and Net ITC at Rs.33,13,175/- and thus arrived the admissible refund amount at Rs.26,41,011/-. 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.*

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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 period was Rs. 46,94,88,145/- whereas FOB value as per shipping Bill was Rs.37,50,31,786/-. Accordingly, as per aforesaid Circular the FOB value of goods which is lower among the two values need to be

taken into account for determining admissible refund amount. Therefore, I find that the adjudicating authority has correctly taken FOB value of goods as turnover of zero rated supply of goods for determining the admissible refund amount which is in accordance with the above Circular. Consequently, submission made by the appellant that they had rightly considered the transaction value as per Section 15 of CGST Act, 2017 for computing refund is devoid of any merit and not sustainable.

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

4. The manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules, 2017.

4.1 Doubts have been raised as to whether the restriction on turnover of zero-rated supply of goods to 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, imposed by amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dated 23.03.2020, would also apply for computation of "Adjusted Total Turnover" in the formula given under Rule 89 (4) of CGST Rules, 2017 for calculation of admissible refund amount.

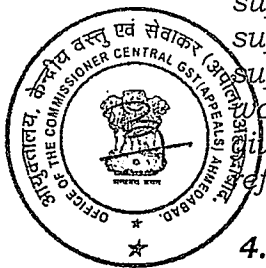
4.2 Sub-rule (4) of Rule 89 prescribes the formula for computing the refund of unutilised ITC payable on account of zero-rated supplies made without payment of tax. The formula prescribed under Rule 89 (4) is reproduced below, as under:

"Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover"

4.3 Adjusted Total Turnover has been defined in clause (E) of sub-rule (4) of Rule 89 as under:

"Adjusted Total Turnover" means the sum total of the value of- (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding- (i) the value of exempt supplies other than zero-rated supplies; and (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.'

4.4 "Turnover in state or turnover in Union territory" as referred to in the definition of "Adjusted Total Turnover" in Rule 89 (4) has been defined under sub-section (112) of Section 2 of CGST Act 2017, as: "Turnover in State or



*turnover in Union territory” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess”*

**4.5** *From the examination of the above provisions, it is noticed that “Adjusted Total Turnover” includes “Turnover in a State or Union Territory”, as defined in Section 2(112) of CGST Act. As per Section 2(112), “Turnover in a State or Union Territory” includes turnover/ value of export/ zero-rated supplies of goods. The definition of “Turnover of zero-rated supply of goods” has been amended vide Notification No.16/2020-Central Tax dated 23.03.2020, as detailed above. In view of the above, it can be stated that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of “Turnover of zero-rated supply of goods”, need to be taken into consideration while calculating “turnover in a state or a union territory”, and accordingly, in “adjusted total turnover” for the purpose of sub-rule (4) of Rule 89. Thus, the restriction of 150% of the value of like goods domestically supplied, as applied in “turnover of zero-rated supply of goods”, would also apply to the value of “Adjusted Total Turnover” in Rule 89 (4) of the CGST Rules, 2017.*

**4.6** *Accordingly, it is clarified that for the purpose of Rule 89(4), the value of export/ zero rated supply of goods to be included while calculating “adjusted total turnover” will be same as being determined as per the amended definition of “Turnover of zero-rated supply of goods” in the said sub-rule.*

**8.** I find that as per definition of adjusted total turnover, defined in clause (E) of sub-rule (4) of Rule 89, the 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 but exclude value of inward supplies which are liable to reverse charge. Thus, in the formula prescribed under Rule 89 (4) of CGST Rules the value of zero rated turnover of goods comes at numerator as well as in total adjusted turnover at denominator. As per clarification issued vide Circular No.147/03/2021, the value taken for turnover of zero rated supply of goods taken at numerator as per clause (C) of Rule 89 (4) need to be taken as value of zero rated supply of goods in adjusted total turnover in the formula. In other words, 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.** In the subject case, the appellant has filed refund claim taking into account turnover of zero rated supply at Rs.37,50,31,786/- being FOB value of export goods ; adjusted turnover at Rs. 37,60,24,734/- and Net ITC at Rs.33,13,175/-. However the adjudicating authority has considered turnover value of zero rated supply at Rs. 37,50,31,786/- being FOB value



of export goods but considered adjusted total turnover as per value shown GSTR3B returns i.e. Rs.47,04,81,142/- [Rs.46,94,88,145/-(invoice value) + Rs.9,92,997/-(Taxable supplies)]. 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.** Accordingly, 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 for determining the admissible refund. Accordingly, in this case the admissible refund as per formula comes as under :

Rs.37,50,31,786/- (Turnover value of zero rated supply of goods as per FOB value of export goods) x Rs.33,13,175 /- (Net ITC) / Rs.37,60,24,734/- = Rs.33,04,426/- (Admissible Rs.31,73,970/-).

**11.** In view of facts of the case, submission made by the appellant and discussion made herein above, I hold that the adjudicating authority has correctly taken the turnover of zero rated supply goods based on FOB value of goods which is the lower value in accordance with Circular No. 125/44/2019-GST dated 18.11.2019. 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. Further, after issue of circular no. 197/09/2023-GST dated 17.07.2023, while calculating refund, same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", needs 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. Accordingly I hold that the adjudicating authority has wrongly arrived the admissible refund at Rs.26,41,011/- and thereby rejected the refund claim amounting to



Rs.5,32,959/-. Therefore, I hold that the impugned order passed by the adjudicating authority rejecting refund of Rs. 5,32,959/- is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order to the extent of rejection of refund claim of Rs. 5,32,959/- and allow the appeal filed by the appellant to that extent only.

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

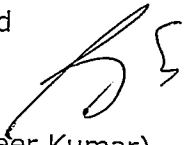
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

  
 (Adesh Kumar Jain)  
 Joint Commissioner (Appeals)

Date: 23.08.2023

Attested

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

By R.P.A.D.

To,  
 M/s. S.K.International,  
 (Legal Name - Sandip Kantilal Thakker),  
 52, Chimanbhai Jivaabhai Patel Market,  
 APMC Yard, Vasna-Sarkhej Road,  
 Ahmedabad - 380 055

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