



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
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By Regd. Post/E-mail

DIN NO.: 20240564SW000001590D

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTD/390/2024 / 4866-92
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-001-APP-JC-21/2024-25 and 30.04.2024
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	01.05.2024
(ङ)	Arising out of Order-In-Original No. ZJ2402230243750 dated 16.02.2023 passed by the Assistant Commissioner, CGST, Div-VI, Ahmedabad-South	
(च)	Name of the Appellant	Name of the Respondent
	The Assistant Commissioner, CGST, Div-VI, Ahmedabad-South	M/s. S & P Capital IQ India Private Limited, Behind Divya Bhaskar, Opp Orchid woods, Corporate road, Prahaladnagar, Ahmedabad 380051

(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) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent 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)
(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 INAPPEAL

The Assistant Commissioner, CGST Division-VI, Ahmedabad South (hereinafter referred to as the appellant)) in terms of Review Order No. 29/2023-24 dated 09.08.2023, 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 present appeal is filed on dated 14.08.2023 against OIO No.ZJ2402230243750 DATED 16.02.2023 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad South sanctioning refund of Rs.7,66,74,854/- to M/s. S&P Capital IQ India Private Limited, S and P House, 5 Sunrise Park Society, Drive In Road, Ahmedabad 380054 (hereinafter referred to as 'the respondent').

2. The respondent is registered under GSTN No.24AACCS8657G1Z5 and had filed refund claim of Rs.7,66,74,854/- for ITC accumulated due to export without payment of duty vide ARN No.AA241222049852F dated 16.12.2022 under Section 54(3) of the CGST Act, 2017. Upon verification of the refund claim, the adjudicating authority found that the claim to be in order and accordingly sanctioned an amount of Rs.7,66,74,854/- to the respondent vide impugned order dated 16.02.2023.



During review of the said refund sanctioned, it is noticed that the adjusted total turnover of supply has been taken as Rs.2,28,92,31,155, (zero rated supply of services + Domestic Supply turnover) whereas, as per the GSTR-1 return for the month of January 21 to December 21, the adjusted total turnover of supply arrives to Rs.3,20,16,73,473/-. The respondent while calculating the adjusted turnover in refund claim of ITC accumulated due to export of goods/services without payment of tax, the adjudicating authority has taken turnover of zero rated supply of services and turnover of domestic supply (other than zero rated, nil rated and exempted value given in GSTR-1, however not calculated turnover of supply of export of services with payment of tax amounting to Rs.91,24,42,318/- as required under Rule 89(4)E of CGST Rules,2017. After adding the same, it comes to Rs.3,20,16,73,473/- Thus taking the higher value of adjusted total turnover Rs. 3,20,16,73,473/- applying the formulae for refund of export without payment of tax, the refund admissible comes to Rs.5,48,23,350/- and not Rs.7,66,74,854/- as sanctioned by the sanctioning authority. Thus, there has been an excess sanction of refund of Rs.2,18,51,504/- to the respondent which is required to be recovered along with interest.

Turnover of zero rated supply	Adjusted total turnover of supply as per GSTR-1	Net ITC	Refund amount sanctioned	Refund amount admissible	Excess Refund amount sanctioned.
1	2	3	4	5 (1*3/2)	6
202,09,97,362	320,16,73,473	7,90,30,470	7,66,74,854/-	5,48,23,350/-	2,18,51,504

4. Being aggrieved with the impugned order, the Deptt. appellant preferred appeal before the appellate authority on 14.08.2023 on the following grounds of appeal:

(i) During review of the instant refund claim, it is observed that the adjudicating authority has considered wrong value of Rs.228,92,31,155/- as adjusted total turnover of supply instead of correct adjusted total turnover of Rs.320,16,73,473/- which resulted in excess refund sanctioned of Rs.2,18,51,504/-

(ii) the calculation of adjusted turnover in refund claim of ITC accumulated due to export of services without payment of tax, the adjudicating authority has taken turnover of Zero rated supply of services and turnover of Domestic supply (other than zero rated, nil rated and exempted) value given in GSTR-1, however, he has not calculated turnover of supply of export of services with payment of tax amounting to Rs.91,24,42,318/-.

As per the definition provided in 89(4)E) of CGST of the Total adjusted turnover, the same should be total of turnover of zero rated supply of services, turnover of domestic supply (other than zero rated, nil rated and exempted) and turnover of export services with payment of tax.

(iii) Sub-rule (4) of Rule 89 prescribes the formula for computing the refund of utilised 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".

(iv) The adjudicating authority appears to have not considered the value of export of services with payment of tax amounting to Rs.91,24,42,318/- in the

adjusted total turnover which comes to Rs.320,16,73,473/- after adding the same and resulted into sanction of Excess refund of Rs.2,18,51,504/-.

(v) With the above submissions prayed to set aside the impugned order dated 16.02.2023 passed by the adjudicating authority.

PERSONAL HEARING

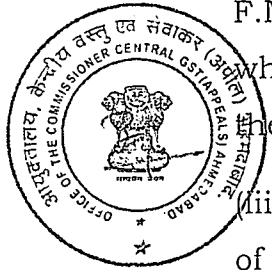
5. Personal hearing in the matter was held on 18.01.2024, wherein Shri Ishant Jain, Consultant of the respondent appeared before me as authorised representative on behalf of the respondent and stated that the refund claim is for the period January'2021 to December'2021. The issue involved is that zero rated turnover is wrongly added/calculated. They further submitted that they already have the Appellate Authority order in their favour which has not been challenged. Further he reiterated the additional submission and requested to allow appeal.

(i) The respondent vide their additional submissions dated 16.01.2024, submitted that pursuant to filing of the subject refund claim, they received their refund sanction order dated 16.02.2023 for an amount of Rs.7,66,74,854/-;

(ii) Post refund sanctioned, they received a notice vide reference no. F.No.CGST/Div-VIII/Appeal-S&P/RO-29/02/2023-24 dated 30.10.2023 wherein the same allegations as in the previous notice were raised, to which the company submitted its reply vide email dated 10.11.2023.

(iii) That they received another notice dated 04.12.2023 under Section 73(1) of the CGST read with Rule 100(2) and 142(1A) of the CGST Rules, 2017 wherein the same allegations regarding calculation of the adjusted total turnover as in the previous notices were raised. They submitted their reply in this regard vide email dated 26.12.2023. And now, the present appeal has been filed by the department;

(iv) As per Rule 89(4)(E) CGST Rules, 2017 they had rightly calculated the adjusted total turnover in accordance with the said rule where adjusted total turnover means the sum total of the value of – the turnover in a State or a union territory as defined under clause (112) of Section 2, excluding the turnover of services; and the turnover of zero rated supply of services determined in terms of clause (D) above and non-zero rated supply of services, excluding the value of exempt supplies other than zero rated supplies; and the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule 4(b) or both, if any, during the relevant period. Thus it is clear that the turnover of services shall not form part of adjusted total turnover except for



the turnover of zero rated supply of services as determined in Rule 89(4)(D) of the CGST Rules.

(v) In their own another case, wherein similar allegation was raised by the department and it was decided by the Appellate Authority that adjusted total turnover shall be computed in terms of Rule 89(4)(E) of the CGST Rules, 2017 and shall not include all zero-rated turnover but shall only include zero rated supply determined in terms of clause (D) of the said rule.

(vi) The respondent have relied upon the case laws of (i) Ford India Pvt Ltd., vs Asst.CCE, Chennai 2011(272) ELT 353(Mad HC) (ii) Shell India Markets Pvt Ltd vs CCE, Bangalore 2012(28)STR 87(Kar.HC) wherein it was held that the refund on account of exports is in the nature of incentives given to exporters for encouraging them and keeping the international markets competitive and therefore such refund claims should be settled expeditiously.

DISCUSSION & FINDINGS

7. 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 subject appeal was filed to set aside the impugned order and for recovery of excess refund of Rs.2,18,51,504/- sanctioned to the respondent on the grounds that the refund was erroneously sanctioned to the respondent. The grounds taken in appeal is mainly disputing turnover of zero rated supply of services and total adjusted turnover taken by the adjudicating authority for calculation of the claim amount. Similarly, the adjudicating authority has taken adjusted turnover value of Rs.2,28,92,31,155/- whereas the appellant has considered value of Rs.3,20,16,73,473/- as per value of supplies shown in GSTR-1 and GSTR-3B returns. However there is no dispute with regard to Net ITC which is taken by both appellant and adjudicating authority at Rs.7,90,30,470. Taking into account the above turnover value, the admissible refund is arrived at Rs.5,48,23,350/-, instead of Rs.7,66,74,854/- claimed and sanctioned to the respondent and accordingly the subject appeal was filed for recovery of excess refund of Rs.2,18,51,504/- sanctioned to the respondent along with interest.

8. In this case refund was claimed for refund of ITC on account of export of services without payment of tax for the period January'2021 to December'2021. As per Section 16 of IGST Act, 2017 such supplies are termed as 'zero rated supply'. The refund in such cases is governed under Rule 89(4) of CGST Rules, 2017 as per which the admissible refund is to be determined by applying the following formula:

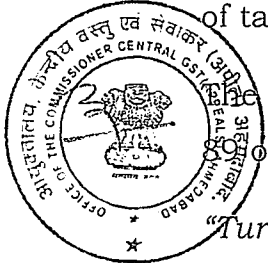
Turnover of zero rated supply of goods + Turnover of zero rated supply of Service X Net ITC

Adjusted total turnover

NET ITC is defined under Clause(B):

"Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules(4A) or (4B) or both.

9. I find that while calculating Adjusted Turnover in refund claim of ITC accumulated due to export of goods/services without payment of tax, the adjudicating authority has taken turnover of Zero rated supply of services and turnover of Domestic supply, (other than zero rated, nil rated and exempted) value given in GSTR-1, however, he has not calculated turnover of supply of export of services with payment of tax amounting to Rs.91,24,42,318/-. In the instant case as per the definition provided in 89(4)E which is reproduced below, of the total adjusted turnover, the same should be total of turnover of zero rated supply of services, Turnover of Domestic supply (other than zero rated, nil rated and exempted) and turnover of Export of services with payment of tax.



The turnover of zero rated supply of services is defined under clause (D) of Rule 89 of the CGST Act, 2017:

"Turnover of zero rated supply of services" means the value of zero rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

Also as per Rule 89(4), turnover has been defined under sub-section (112) of Section 2 of the CGST Act, 2017.

Adjusted total turnover is defined under Clause (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; 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.]

"Relevant period" as defined in clause F means the period for which the claim has been filed.

10. The main dispute in this case is mainly disputing the adjusted turnover of refund claim of ITC accumulated due to export of goods/services without payment of tax, the adjudicating authority has taken turnover of zero rated supply of services and turnover of domestic supply (other than zero rated, nil rated and exempted) value given in GSTR-1 for the period January'2021 to December'2021 and has not calculated turnover of supply of export of services with payment of tax amounting to Rs.91,24,42,318/-. Hence as per definition given under clause (D) above, the turnover of zero rated supply of services is **the aggregate of payment, including advances, received during the claim period for zero rated supply of services. In the subject case, refund claim was filed for the period January'2021 to December'2021 and hence as per definition of turnover of zero rated supply given under clause (D) the payment received during the claim period for zero rated supply is to be considered.**

11. The adjusted turnover as per the calculations shown in the GSTR-1 is as under ;

Period	Taxable value of domestic supply	Taxable value of export with payment of tax	Taxable value of export without payment of tax	Total taxable value
Jan'2021 to December'2021	6,82,33,794	91,24,42,318	273,73,26,963	371,80,03,075

Thus, I observe that the adjudicating authority has considered the adjusted total turnover as Rs.228,92,31,155/- and upon adding the taxable value of export with payment of tax Rs.91,24,42,318/- the Adjusted Total Turnover

arrives to Rs.320,16,73,473/-, as per the Rule 89(D) how to calculate the manner of adjusted total turnover. I find that the adjusted adjudicating authority has granted Rs.2,18,51,504/- excess refund of export comparing to the admissible refund amount of Rs.5,48,23,350/-. 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-1311/2021-22 dated 02.03.2022. On going through the said appellate order, I observe that though the order pertains to Refund, the adjusted turnover in the said OIA was not correct due to the fact that there was no supply of goods or non zero rated supply of services made during the claim period, the turnover of zero rated supply determined as per clause (D) only will form part of adjusted turnover. Obviously, in such instance both the turnover value of zero rated supply of services and adjusted total turnover will be same. Whereas, in the present issue the adjusted total turnover as in the OIO is not correct, as the adjudicating authority has calculated the adjusted turnover by taking into account turnover of zero rated supply of services and turnover of Domestic supply and **excluded the turnover of supply of export of services with payment of tax. Hence, both the issues are different.**

12. In view of above facts and discussions of the case, the appeal filed by the Appellant Department is allowed as the Refund Sanctioning Authority has granted excess refund amounting to Rs.2,18,51,504/- which shall be recovered forthwith along with interest payable as per Section 50 of the CGST Act, 2017.

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

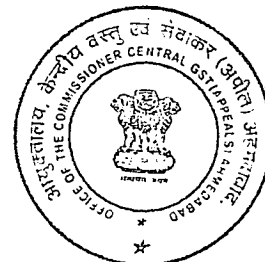
13. The appeals filed by the *appellant/department* stands disposed of in above terms.

Adesh Kumar Jain
30/04/2024
(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: .04.2024

// ATTESTED //

Vijaya Lakshmi V
(Vijaya Lakshmi V)
Supdt. (Appeals)
Central Tax
Ahmedabad.



BY RPAD

By R.P.A.D.

To,
M/s. S & P Capital IQ India Pvt Ltd.,
Behind Divya Bhaskar, Opp. Orchid Woods,

Corporate Raod, Prahaladnagar,
Ahmedabad Gujarat-380051.

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. Commr., CGST, Division-VIII, Ahmedabad South.
5. The ~~Asstt. Commr.~~ Div - VI, CGST, Ahmedabad South
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
- ✓ 7. Guard File.
8. P.A. File



