



सन्धमेव 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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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2241/2242/2244/2023/S229
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-50 to 52/2023-24 and 31.08.2023
(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	11.09.2023
(ङ)	Arising out of Order-In-Original No. ZM2403230294062 dated 17.03.2023, ZH2403230294195 dated 17.03.2023 and ZF2404230313074 dated 24.04.2023 passed by The Assistant Commissioner, CGST, Division-VII, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Astha Creation (GSTIN: 24AATFA7005L1Z9), 5 <sup>th</sup> Floor, A-501, Narnarayan Complex, Swastik Society Cross Road, Ahmedabad-380009

(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. Astha Creation, 501, 5<sup>th</sup> Floor, Narnarayan Complex, Swastik Society Cross Road, Ahmedabad, Gujarat, 380009 [hereinafter referred to as "the appellant"] have filed the following appeals dated 21-06-2023 against RFD-06 Orders mentioned against the appeals [hereinafter referred to as "impugned orders"] passed by the Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad-NORTH [hereinafter referred to the "adjudicating authority"]

Sl. No.	Appeal No. and date	RFD-06 Order No. & date	Month for which refund claimed	Refund Amt. applied for	Refund amount considered as Inadmissible
01	GAPPL/ADC/GSTP /2242/2023	ZM2403230294062 dated 17-03-2023	July-21	Rs.7,80,673/-	Rs.2,00,417/-
02	GAPPL/ADC/GSTP /2241/2023	ZH2403230294195 dated 17-03-2023	August-21	Rs.4,79,113/-	Rs.37,313/-
03	GAPPL/ADC/GSTP /2244/2023	ZF2404230313074 dated 24-04-2023	September-21	Rs.3,57,979/-	Rs.63,459/-

2. Facts of the case in brief, are that the appellant is registered vide GSTIN 24AATFA7005L1Z9 is engaged in the business of manufacturing of textile products e.g. Bedsheets, Bed Cover, etc. and also engaged in Job-Work Activity for various textile products. The appellant had filed refund claims (RFD-01s ) under ARNs No. AA240123087212Q, AA240123087524F and AA240323045058K dated 18.01.2023, 18.01.2023 and 15.03.2023 respectively on account of ITC accumulated due to inverted tax structure for the period July, August and September-2021 under Section 54 of the CGST Act, 2017 and Rule 89 of the CGST Rules, 2017. As per formula prescribed under Rule 89(5) of CGST Rules, 2017, Maximum Refund Amount worked out to each Refund claim as mentioned in the table above by taking following values, as shown in FORM RFD-01, as under :

Month	Turnover of inverted supply	Tax payable on such inverted rated supply of goods and service X Net(ITC/ITC)	Adjusted Turn Over	Net ITC	Refund $\{(1)*(4)/(3)-2\}$
	1	2	3	4	5
July-2021	49724400	2223265.47	57405149	3236570.75	580255.50
August-2021	57156872	2500410.55	57156872	2942210.58	441800.03
September-2021	59411392	2809564.217	59952251	3132343	294520.36

Thus the adjudicating authority has sanctioned the refund claims filed by the appellant vide 3 ARNs as mentioned above, sanctioning the refund amount of Rs. 5,80,255.50, Rs.4,41,800.03 and Rs. 2,94,520.36 as against the amount of refund claimed Rs.7,80,673/-, Rs.4,79,113/- and Rs.3,57,979/- respectively.

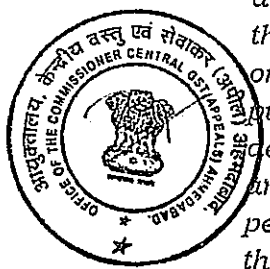
3. Being aggrieved with the above impugned orders of the adjudicating authority, the appellant filed the above mentioned three appeals on the following grounds:

- "At the outset, the Appellant submits that the impugned order, confirming denying refund of Rs. 2,00,417/-, 37,313/- and 63,459/- is cryptic, non-speaking and has been passed mechanically, without dealing with the submissions made by the Appellant.
- The main issue of difference in calculation of refund amount is due to consideration of 18% outward supply by the Ld. Assistant Commissioner in the inverted duty structure formula which is against the intent of inverted duty structure formula as per Section 54(3) OF the CGST Act, 2017 read with Rule 89(5) of the Rules, 2017.
- At the outset, the Appellant submits that the said allegation is completely baseless and contradictory to the facts of the present case. The Appellant had produced all the valid documents at the time of application of refund, i.e., tax invoice, Form GSTR-1 and GSTR-3B in respect of the subject goods.
- Thus, the Appellant states that the impugned order is non-speaking and has confirmed the denial of refund without stating any independent reasoning of its own. Thus, the impugned order suffers from the vice of being passed mechanically without stating any reasons or independent application of mind. Reliance is placed on the decision of the Hon'ble High Court of Gujarat in *M/s Neuvera Wellness Ventures Pvt. Ltd. v. State of Gujarat*, 2019 (4) TMI 1448, wherein in a case having similar set of facts, the following observations were made:

"A perusal of the impugned order dated 2.4.2019 passed by the second respondent in FORM GST MOV-09 whereby tax and penalty have been demanded, reveals that the basis for computing the additional tax is the IGST paid by the petitioners. Moreover, in the impugned order there is not even a whisper as regards the submissions advanced on behalf of the petitioners, nor have the same been dealt with in the body of the order. No reasons have been assigned by the second respondent for the purpose of holding the petitioner liable to payment of tax and penalty despite the fact that IGST had already been paid on such transaction and the goods were being moved from the customs warehouse to the petitioner's own godown and it being the case of the petitioners that there was no supply, and hence, the provisions of GST Act are not applicable. The impugned order is, therefore, totally bereft of any reasoning."

(Emphasis supplied)

- In this regard, the Appellant places reliance on the decision of the Hon'ble High Court of Rajasthan in *Sakeel v. State Tax Officer*, 2018 (9) TMI 609 wherein the following observations were made:
  4. On reading the aforesaid provision, it is apparent that while the power exists with the respondents to take action under Section 129(3) of the Act and thereafter to proceed under Section 130 of the Act, before taking any such decision, the concerned person has to be given an opportunity of being heard which inherently means that the submissions which the concerned person may take up while filing his objections have to be examined and a speaking order has to be passed giving out reasons for not accepting the objections. It is to be noted that once such an order has been passed, it can be challenged by the aggrieved person by filing an appeal under Section 107 of the Act.
  5. However, in the present case, this Court finds that the requirement of Section 129 (4) & (5) of the Act has not been followed and the concerned



authority has failed to take notice of the objections and it cannot be said that the order impugned is a speaking order.

- Reliance is also placed on decision of the Hon'ble Apex Court in the case of *Cyril Lasardo (Dead) v. Juliana Maria Lasardo*, 2004 (7) sec 431, wherein the following observations were made:

"11. Reasons introduce clarity in an order. On plainest reading and consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amendable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

12. Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union* observed: (All ER p. 1154h) "The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley) Ltd. v Crabtree* it was observed: "Failure to give reasons amounts to denial of justice. Reasons are live links between the minds of the decision taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

Similar views were expressed in a decision of the Hon'ble Supreme Court in the case of *Asst. Commissioner, Commercial Tax Department v. Shukla & Brothers*, 2010 (254) EL 6 (SC) 2011 (22) STR 105 (SC) wherein the Court observed as under:

"9 .....In our view, it would neither be permissible nor possible to state as a principle of law, that while exercising power of judicial review on administrative action and more particularly judgment of courts in appeal before the higher court, providing of reasons can never be dispensed with. The doctrine of *audi alteram partem* has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has never been uniformly applied by courts in India and abroad."

- Reliance is also placed on the decision of the Hon'ble Supreme Court in *Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India*, AIR 1976 SC 185, wherein the Hon'ble Supreme Court reiterated that an authority making an order in exercise of its quasi-judicial functions must record reasons in support of the order it makes.

In the present case, as stated supra, the impugned order is non-speaking and has been passed mechanically with pre-determined conclusions and without adequately examining or responding to the submissions made by the Appellant, in violation of the principles of natural justice. Thus, the impugned order is liable to be set aside.

Appellant is eligible for refund of total amount of Rs. 7,80,673/-, Rs.4,79,113/- and Rs.3,57,979/- (July, August & September-2021) in terms of Section 54(3) of CGST Act, 2017 read with Rules 89(5) of CGST Rules as amended.

- The finding in the impugned order are wrong and legally incorrect, since Appellant has correctly claimed the refund of accumulated input tax credit (ITC) under the category "Refund on account of ITC accumulated due to Inverted Tax Structure", for the tax period July-2021, in terms of Rule 89(5) of CGST Rules, 2017, read with Section 54(3) of CGST Act, 2017.
- It is submitted that during the month of July-2021, August-2021 and September-2021, Appellant has made outward supply. Details of outward supply made during the tax period July-2021, August-2021 and September-2021 as reported in GSTR-1, is tabulated below, for ease of reference:

Table- 1: July-2021- Details of outward supplies

Sl.No.	Particulars	Amount
1	B2B Supply (5%)	4,74,43,310
2	B2B Supply (18%)	22,94,784
3	Export	76,80,749
4	Credit Note - B2B (5%)	(13,694)
	Net Value of Outward Supply	5,74,05,149

Table- 1 August-2021- Details of outward supplies

Sl.No.	Particulars	Amount
1	B2B Supply (5%)	5,68,15,811
2	B2B Supply (18%)	3,60,622
3	Credit Note - B2B (5%)	(19,561)
4	Net Value of Outward Supply	5,71,56,872

Table- 1 September-2021 : Details of outward supplies

Sl.No.	Particulars	Amount
1	B2B Supply (5%)	5,79,73,733
2	B2B Supply (12%)	15,08,770
3	B2B Supply (18%)	5,86,638
4	B2C Supply (5%)	41,533
5	Export supply	5,40,859
6	Debit Note-B2B (5%)	4,686
7	Credit Note-B2B(5%)	(70,3,968)
	Net Value of Outward Supply	5,99,52,251

- Further, in the month of July-2021, August-2021 & September-2021, Appellant has procured inputs at the GST Rate of 5%, 12% and 18%,
- Therefore, since the Appellant has made outward supply of goods during July & August-2021 @5% and 18%, and procured inputs at the rate of 5%, 12% and 18%, the input tax credit has been accumulated on account of said inverted duty structure supply.

Therefore, since the Appellant has made outward supply of goods during September-2021 @5%, @12% and 18%, and procured inputs at the rate of 5%, 12% and 18%, the input tax credit has been accumulated on account of said inverted duty structure supply.



- Therefore, in terms of Section 54(3) of CGST Act, 2017 read with Rules 89(5) of CGST Rules, as amended vide Notification No. 14/2022-CT, dated 05.07.2022, Appellant has claimed the refund of unutilised input tax credit on account- rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) i.e., refund under inverted duty structure.

**Section 54(3)** of CGST Act, 2017 is reproduced below:

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than-

- (i) Zero rated supplies made without payment of tax;  
(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies ( other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

**Rules 89(5)** of CGST Rules, 2017, amended vide Para 8(d) of the Notification No. 14/2022 - Central Tax dated 05.07.2022, is reproduced below:

(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

$$\text{Maximum Refund Amount} = \{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC Adjusted Total Turnover}\} - \{\text{tax payable on such inverted rated supply of goods and services} \times (\text{Net ITC}) / \text{ITC availed on inputs and input services}\}$$

Explanation:-For the purposes of this sub-rule, the expressions -

- (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; and  
"Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).

- From the provisions mentioned above, it has been cleared that registered person is eligible to claim refund of accumulated ITC on account of inverted duty structure, and Turnover of Inverted Duty supply would be considered, only when rate of tax on inputs being higher than the rate of tax on output supplies.
- From the above Table-1 (July-2021) it can be seen that Appellant has made outward supply at the GST rate of 5%, and therefore, claimed the refund of unutilised input tax credit on account- rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), tabulated below:

July-2021

Sl.No.	Particulars	Amount
1	B2B Supply (5%)	4,74,43,310
2	Credit Note - B2B (5%)	(13,694)
	Net Value of Outward Supply	4,74,29,616

From the above Table-I (August -2021) it can be seen that Appellant has made outward supply at the GST rate of 5% and 18% and therefore, claimed the refund of unutilised input tax credit on account- rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), tabulated below:

August-2021

Sl.No.	Particulars	Amount
1	B2B Supply (5%)	5,68,15,811
2	B2B Supply (18%)	3,60,622
3	Credit Note - B2B (5%)	(19,561)
	Net Value of Outward Supply	5,71,56,872

From the above Table-I (September -2021) it can be seen that Appellant has made outward supply at the GST rate of 5%, 12% and 18% and therefore, claimed the refund of unutilised input tax credit on account- rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), tabulated below:

September-2021

Sl.No.	Particulars	Amount
1	B2B Supply (5%)	5,79,73,733
2	B2B Supply (12%)	15,08,770
4	B2C Supply (5%)	41,533
5	Debit Note-B2B (5%)	4,686
6	Credit Note-B2B(5%)	(70,3,968)
	Net Value of Outward Supply	5,94,52,251

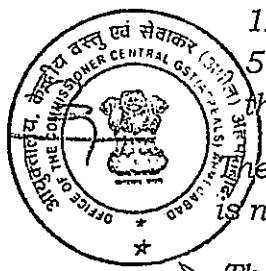
Refund calculation:

Month	Inverted Turnover	Tax payable on such inverted rated supply of goods and service X Net ITC/ITC availed on Inputs and Input services)	Adjusted Turn Over	Net ITC	Refund $\{(1) \times (4) / (3) - 2\}$
	1	2	3	4	5
July-2021	47429616	1893465	57405149	3236571	780673
August- 2021	56796250	2444534	57156872	2942211	479113
September- 2021	58824754	2715455	59952251	3132343	357979

- However, while verifying the refund claim filed by the noticee, Ld. Assistant Commissioner has also considered the outward supply made at the GST rate of 18% of Rs. 22,94,784/-, 3,60,622/- and 5,86,638/- during July-2021, August-2021 and September-2021 respectively and accordingly re-calculated the refund claim as tabulated below:

Month	Inverted Turnover	Tax payable on such inverted supply of goods and service X NetITC/ITC)	Adjusted Turn Over	Net ITC	Refund $\{(1) \times (4) / (3) - 2\}$
	1	2	3	4	5
July-2021	49724400	2223265	57405149	3236571	580255
August-2021	57156872	2500411	57156872	2942211	441800
September-2021	59411392	2809564	59952251	3132343	294520

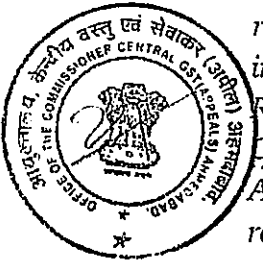
- The above re-calculation of refund of inverted duty structure, by Ld. Assistant Commissioner, is factually wrong and legally not sustainable in GST law, since while calculating the turnover of Inverted Rated Supply, the main aspect to consider is to take that outward supply, on which the rate of GST is lower, then the rate of inputs procured.
- In the instant case, the Appellant has procured the goods at the rate of 5%, 12% and 18% only. Therefore, the outward supply, on which rate of GST is 5% would be considered as turnover of inverted rated supply, for the purpose of Rule 89(5) *ibid.* (For July-2021)
- In the instant case, the Appellant has procured the goods at the rate of 5%, 12% and 18% only. Therefore, the outward supply, on which rate of GST is 5% would be considered as turnover of inverted rated supply, for the purpose of Rule 89(5) *ibid.* (For August-2021)
- In the instant case, the Appellant has procured the goods at the rate of 5%, 12% and 18% only. Therefore, the outward supply, on which rate of GST is 5% & 12% would be considered as turnover of inverted rated supply, for the purpose of Rule 89(5) *ibid.* (For September-2021)
- The outward supply at the rate of 18% would not be considered, since there is no inputs that has been procured at the GST rate of above 18%.
- Therefore, the contention of department to consider the outward supply of 18% also (along with outward supply @5%) during July & August -2021 and (along with 5% & 12% during September -2021) as Inverted Rated Supply of goods/services, in numerator of formula, as per Rule 89(5) *ibid.*, is legally incorrect. Department should only consider the actual turnover of inverted rated supply made at the rate of 5% only, which is Rs. 4,74,29,616/- in July-2021, Rs.5,67,96,250/- in August-2021 and at 5% and 12% only which is Rs.5,88,24,754/- in September-2021, as "Turn over of Inverted Rated Supply of goods and services", in Refund calculation.
- On this ground only, the impugned show cause notice is liable to be quashed, and the refund of Rs.7,80,673/-, Rs.4,79,113/- and Rs.3,57,979/- for the month July-21, August-21 and September-21 respectively should be granted to the Appellant.
- Ld. Assistant Commissioner has given a finding that para 54 of circular number 125/44/2019-GST, dated 18th November 2019 explains a case where only one output is being supplied (manufacturing process involves the use of input A attracting 5% GST and input B attracting 18% GST to manufacture output Y attracting 12% GST). There is no mention of the supply that should or should not be considered as inverted supply in a case where outputs are being supplied at multiple rates with one of the outputs being supplied at a rate equal to the rate of the input as is happening in the





instant case where outputs are being supplied at the rate of 5% and 18% while inputs are being procured at rates of 5%, 12% and 18%.

- It is submitted that that the understanding of Ld. Assistant Commissioner negates the concept of inverted duty structure. The concept inverted duty structure means where rate of input tax is higher than rate of output supplies.
- Refund of accumulated unutilised input tax credit for assesses who's input tax rate is higher than output tax is eligible in terms of Section 54(3) (ii) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017 which provides statutory mechanism refund of input tax credit on account of inverted duty structure."Turnover of inverted rated supply of goods" means the value of the inverted supply of goods made during the relevant period, which in the present case is turnover of output supply at the rate of 5% in July-21, 5% in August-21 and 5% and 12% during September-2021.
- It is submitted that the finding of the Ld. Assistant Commissioner is based on wrong facts. It is a finding of the Ld. Assistant Commissioner that in the instant case where outputs are being supplied at the rate of 5%, 12% and 18% while inputs are being procured at rates of 5%, 12% and 18%. It is submitted that for the month of September 2021, outputs are supplied at the rate of 5%, 12% and 18% and not 5% and 18% of understanding of Ld. Assistant Commissioner negates the concept of inverted duty structure. The concept inverted duty structure means where rate of input is higher than rate of output supplies.
- Therefore, in view of the above submission of facts and legal position, and without prejudice to our rights of further additional submissions, we hereby request your good self, to kindly consider the above legal positions in the instant cases and sanction the eligible refund of Rs.7,80,673/-, Rs.4,79,113/- and Rs.3,57,979/- curtailed on this count, claimed vide RFD-DI having ARN- AA240123087212Q, AA240123087524F and AA240323045058K dated 18.01.2023, 18.01.2023 and 15.03.2023 respectively and set-aside the impugned orders rejecting of refund of Rs.2,00,418/-, Rs.37,313/- and Rs.63,459/."



#### PERSONAL HEARING:

4. Personal hearing in the matter was held on 29.08.2023 virtually, Ms.Madhu Jain, Advocate, appeared on behalf of the Appellant in the present appeal. During the Personal Hearing she submitted that the Ld. Refund Sanctioning authority has erred in calculation in formula by taking 18% supply also in inverted duty structure which is against the basic principle of inverted duty structure. She further reiterated the written submissions and requested to allow the refunds rejected by the Ld. Refund sanctioning authority. She further submitted that additional submissions will be sent via email.

5. The brief of the additional submissions is as under:

- Apart from the submissions made in the appeal memorandum, the appellant has further submitted that the said adjudicating authority i.e. the Additional Commissioner, vide order passed in RFD-06 having Order No.ZE2407230264011 dated 19-07-2023 for the subsequent period i.e. October-2022 to January-2023 in the case of Appellant has allowed total

refund by applying the refund formula as prescribed in Rule 89(4) and as amended vide Notification No.14/2022-CT dated 05-07-2022.

- In the said refund order, it is clearly mentioned at para 2.2 that “as per statement 1A under Rule 89(5), as submitted by the claimant, it is observed that inputs have been procured at the rate of 18%, 12% and 5% and the claimant has declared 5% as the inverted outward supply as other supply has been made by them at the rate of 18%. Therefore, same is to be considered as inverted supply.”
- Accordingly, the appellant has considered the outward supply made @5% only as inverted duty turnover, which is duly accepted by the adjudicating authority, and not considered the outward supply @18%.
- Therefore, the same adjudicating authority is taking two different views on the same subject matter. Which is legally not sustainable i.e. adjudicating authority has disallowed refund for the period in question i.e. July-2021, August-2021 and September-2021, however, allowed the full refund, on the same subject matter, for the subsequent period i.e. October-2022 to January-2023.
- Therefore the contention of the department of considering the outward supply 18% also, as Turnover of Inverted duty supply, is factually wrong, and, it is submitted that the present order is passed based on incorrect factual basis and legal provision. Thus is liable to be set aside and rejected refund should be granted, only on this ground.

#### DISCUSSIONS AND FINDINGS:

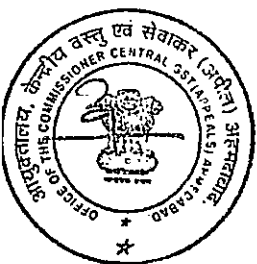
6. I have gone through the facts of the case, available documents on record and written submissions made by the ‘*appellant*’. I find that the main issue to be decided in the instant case is :

- (i) whether the impugned refund order(s) passed by the Adjudicating Authority is legal & proper and is in conformity with Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017 or not
- (ii) whether the adjudicating authority has erred in calculating the maximum refund amount as it is in accordance with Rule 89 of the CGST Rules, 2017 or not.

6.1 At the foremost, I observed that in the instant case the “impugned orders” are of dated 17-03-2023, 17-03-2023 and 24-04-2023 and the present appeals are filed online on 13-06-2023 and physical copies submitted on 21.06.2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. Therefore, I find that the present appeals are filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

6.2 I find that the present appeal is filed to set aside the impugned refund orders on the grounds that the adjudicating authority has erred in calculation, in formula by taking 18% supply also for the purpose of arriving at the “Turnover of inverted rated supply of goods and services” while calculating the refund under ITC accumulated due to inverted rate of tax by the adjudicating authority which is against the basic principle of inverted duty structure.

6.3 Since, the refund claims in question are relating to ITC accumulated due to Inverted Tax Structure, I find that the same are governed under Section 54 of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules,



2017. I find that refund of Input Tax Credit shall be granted as per the formula prescribed Rule 89(5) of the CGST Rules, 2017 as under :

*Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC / Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.*

6.4 Further, I refer to the relevant provisions of Rule 89 of CGST Rules, 2017 wherein the formula for calculating the refund under inverted duty structure is provided, which is reproduced as under:

.... **Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-**

*[(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula -*

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

Where, -

(A) "Refund amount" means the maximum refund that is admissible;

(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;

[(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;]

(D) "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;

(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.]

(F) "Relevant period" means the period for which the claim has been filed.

**[Explanation.**—For the purposes of this sub-rule, the value of goods exported out of India shall be taken as –

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or

(ii) the value declared in tax invoice or bill of supply,

whichever is less.]

[(4A) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E) dated the 18th October, 2017, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

[(4B) Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has –

(a) received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017 Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E), dated the 23rd October, 2017; or

(b) availed the benefit of notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017,

the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.]]

Maximum Refund Amount = {(Turnover of inverted rate supply of goods) X Net ITC / Adjusted Total Turnover} – (Tax payable on such inverted rated supply)

**Explanation :** For the purposes of this sub-rule, the expression –

(a) Net ITC means 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; and

(b) "Adjusted Total Turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4)."

[(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC / Adjusted Total Turnover} - {(tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services))}.

**Explanation:** - For the purposes of this sub-rule, the expressions -

(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; and

["Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).]

6.5 In this regard, I find that the Appellant in the present appeals mainly contended that the adjudicating authority has not taken the correct value of Turnover of inverted rated supply of goods and services in numerator as per Rule 89(5) ibid to arrive at the correct amount of admissible Refund. The Appellant has contended that they had made outward supply of goods/services ( as per Refund for July & August-2021) @5% and 18%, (as reflecting in the Table-1 of respective month) and procured inputs at the rate of 5%, 12% and 18%, the adjudicating authority has considered the turnover of 18% also (along with outward supply @5%), further they had made outward supply of goods/services during September-2021 @5%, @12% and @18% ( as reflecting in the table-1 of respective month) and procured inputs at the rate of 5%, 12% and 18%, the adjudicating authority has considered the turnover of 18% also (along with outward supply @5% and 12% ), Accordingly, by considering the Turnover of 18% in the Turnover of inverted rated supply of goods and services and applying in the above formula, an amount of Rs. 2,00,417/-Rs.37,313/- and Rs.63,459/- for the refund claimed by the appellant for the months July-2021, August-2021 and September-2021, has been rejected by the adjudicating authority.

6.6 As per provisions ibid, I am of the view that for the purpose arriving at the "Turnover of inverted rated supply of goods and services" while calculating the refund under ITC accumulated due to inverted rate of tax, Inverted rated turnover of those supplies is to be taken which attract tax less than the tax paid on the inward supplies of goods/services. In the instant case the appellant has made outwards supplies @5% and 12% (as mentioned in the submissions made by the appellant) and procured input supplies at the rate of 5%, 12% and 18%. Thus the Turnover of inverted supply shall be considered taking into the values of 5% and 12% only as applicable in each of the refund claim in the instant case.

6.7 Further, I find that at para 54 of the Circular No. 125/44/2019-GST dated 18.11.2019, it is clearly explained in the Circular supra, that the Net ITC covers the ITC availed on all inputs in the relevant period. The text of the same is reproduced hereunder:

"54. There have been instances where while processing the refund of unutilized ITC on account of inverted tax structure, some of the tax authorities denied the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in rule 89(5) of the CGST Rules. The matter has been examined and the following issues are clarified:

a) Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax."

6.8 In the instant case, it covers ITC availed on inputs purchased @ 5%, 12%, and 18%. Correspondingly, the "Turnover of inverted rated supply of goods and services" and "tax payable on such inverted rated supply of goods and services"

should also cover all the outwards supplies made by the Respondent @ 5% and 12% (except outward supplies made at the rate equal to the highest rate of inward supply i.e. @18% only) to arrive at the turnover of the inverted rated supply of goods and services.

6.9 Therefore, considering the foregoing facts, I am of the view that the correct value of Turnover of inverted rated supply of goods and services in the prescribed formula has not been considered by the adjudicating authority in sanctioning the refunds in the instant case. Value of supply of goods @ 18% cannot be considered under inverted tax structure as inputs are procured @5%, @12% and @18%, therefore only goods @5%, and @12% should be considered as inverted supply in the instant case. Accordingly, I agree with the submission of the Appellant. Therefore, the refunds sanctioned vide impugned orders are not legal and proper to above extent.

7. In view of the above discussion and findings, I allow the appeal filed by the appellant and direct the Refund Sanctioning Authority i.e. Adjudicating Authority to re-determine the refund in respect of the impugned orders, by re-computing the Turnover of Inverted supply in above terms. The impugned three orders are modified to above extent.

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

8. The appeal(s) filed by the appellant stand disposed of in above terms.

*Adesh Kumar Jain*  
21/08/2023  
(ADESH KUMAR JAIN)  
JOINT COMMISSIONER (APPEALS)  
CGST & C.EX., AHMEDABAD.

Attested

*Sunita D. Nawani*  
(Sunita D. Nawani)  
Superintendent,  
CGST & C.Ex.,  
(Appeals), Ahmedabad



By R.P.A.D.

To

M/s. Astha Creation, 501, 5<sup>th</sup> Floor, Narnarayan Complex, Swastik Society Cross Road, Ahmedabad, Ahmedabad, Gujarat, 380009. (GSTIN 24AATFA7005L1Z9)

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Appeals, Ahmedabad
3. The Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division-VII, Ahmedabad-North Commissionerate.
5. The Additional Commissioner, Central Tax (System), Ahmedabad-North Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File/ P.A. File.

