
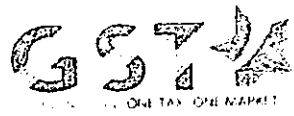


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN 20210464WT0000222F3A

फा.सं./F.No.GST/15-40/OA/2019

आदेश की तारीख/Date of Order :- 29.04.2021
जारी करने की तारीख/Date of Issue :- 29.04.2021

द्वारा पारित/Passed by:-

एम.एल.मीणा / M.L.Meena
अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 03/ADC/ MLM /2021-22

जिस व्यक्ति(याँ) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent. इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से तीन महीने के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या GST APL-1 में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form GST APL-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST APL-1 में दो प्रतियों में दाखिल की जानी चाहिए। यह अपील सी.जी.एस.टी. अधिनियम, २०१७ की धारा १०७(1) के साथ सी.जी.एस.टी. नियम १०८ एवं १०९(A) के प्रावधानों के अनुसार होनी चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम

एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

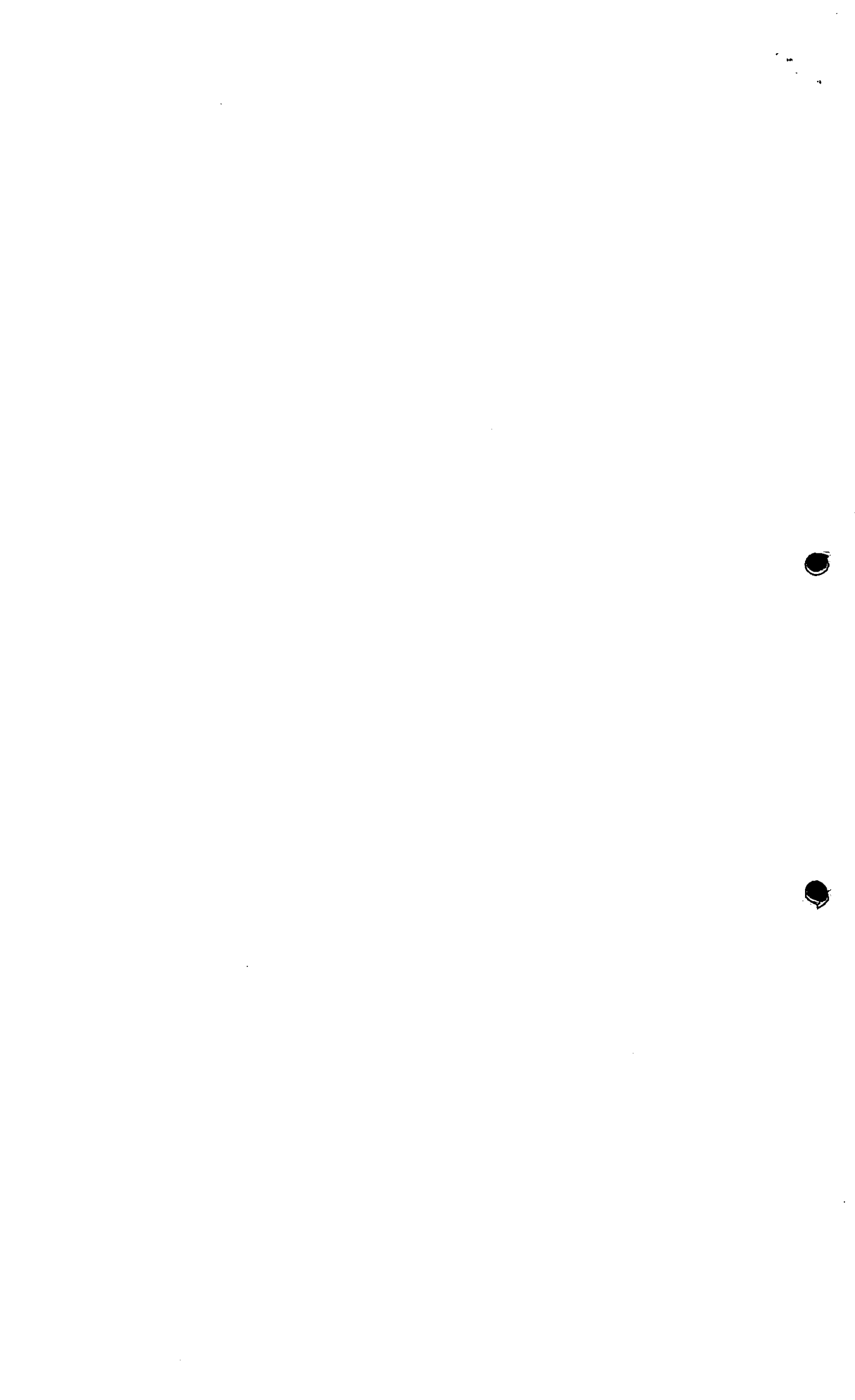
The appeal should be filed in form GST APL-1 in duplicate. It should be signed by the appellant in accordance with the provisions of subsection(1) of section 107 of CGST Act 2017, read with rule 108 and 109(A) of CGST Rules 2017.. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order

Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. GST/15-40/OA/2019 dated 15.10.2020 issued to M/s Ford India Private Limited, Revenue Survey No. 6, Village North Kotpura, Tal. Sanand, Ahmedabad, Gujarat-382170.



(FORM GST DRC-07)

(See rule 100(1), 100(2), 100(3) & 142(5))

Summary of the Order

Reference No. GST/15-40/OA/2019 dated 15.10.2019.

Date : 29.04.2021

1. Details of order:
 - (a) Order No : 03/ADC/MLM/OA/2021-222
 - (b) Order Date: 29.04.2021.
 - (c) Financial Year
 - (d) Tax period : From to
2. Issues involved: Erroneous refund to the tune of Rs.53,34,51,903/-
3. Description of goods/service (if applicable)

Sr.No.	HSN Code	Description
	NA	NA

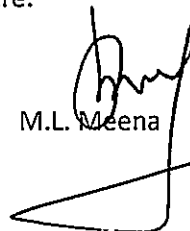
4. Section(s) of the Act under which demand is created: Section 73 of the CGST Act, 2017.
5. Details of demand: Show Cause Notice No.GST/15-40/OA/2019 dated 15.10.2019 for erroneous refund.
(Amount in Rs.) Rs.53,34,51,903/- (Rupees fifty three crores thirty four lakhs fifty one thousand nine hundred and three only)

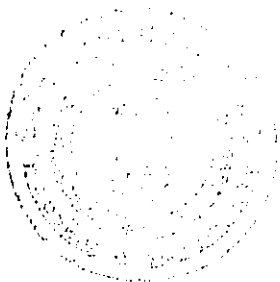
Sr. No.	Rate Tax	Turn over	Tax paid		Act	POS (Place of supply)	Tax Rs.	Interest	Penalty	Others	Total Rs.
			From	To							
1	2	3	4	5	6	7	8	9	10	11	12
	NA	NA	NA	NA	73 of CGST Act, 2017.	NA	533451903	To be calculated	533451903
Total							533451903				533451903

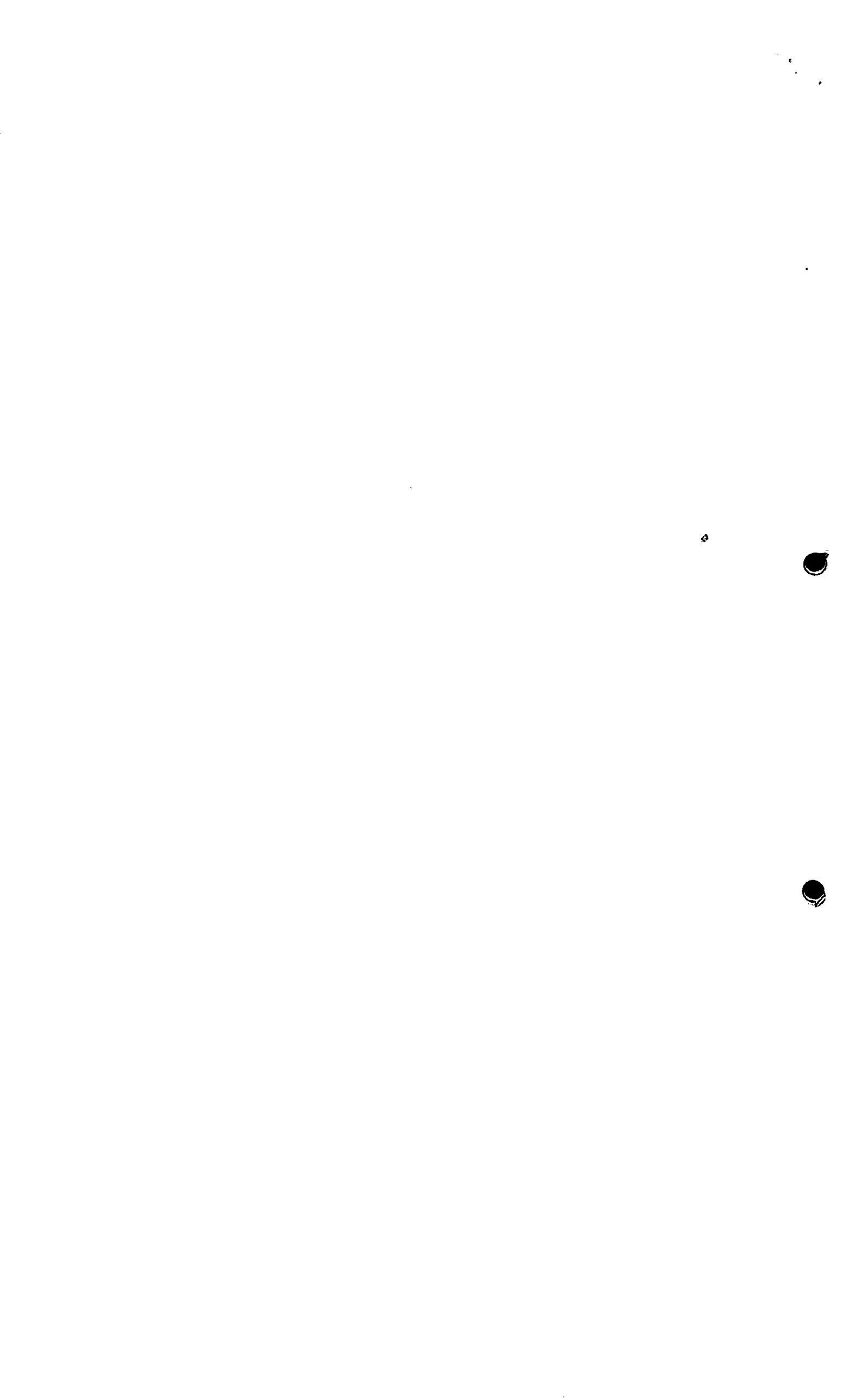
You are hereby directed to make the payment.

Signature:

Name : M.L. Meena


29/4





Jurisdiction

Address : The Deputy Commissioner
Central GST, Division-III
Sanand, Ahmedabad North

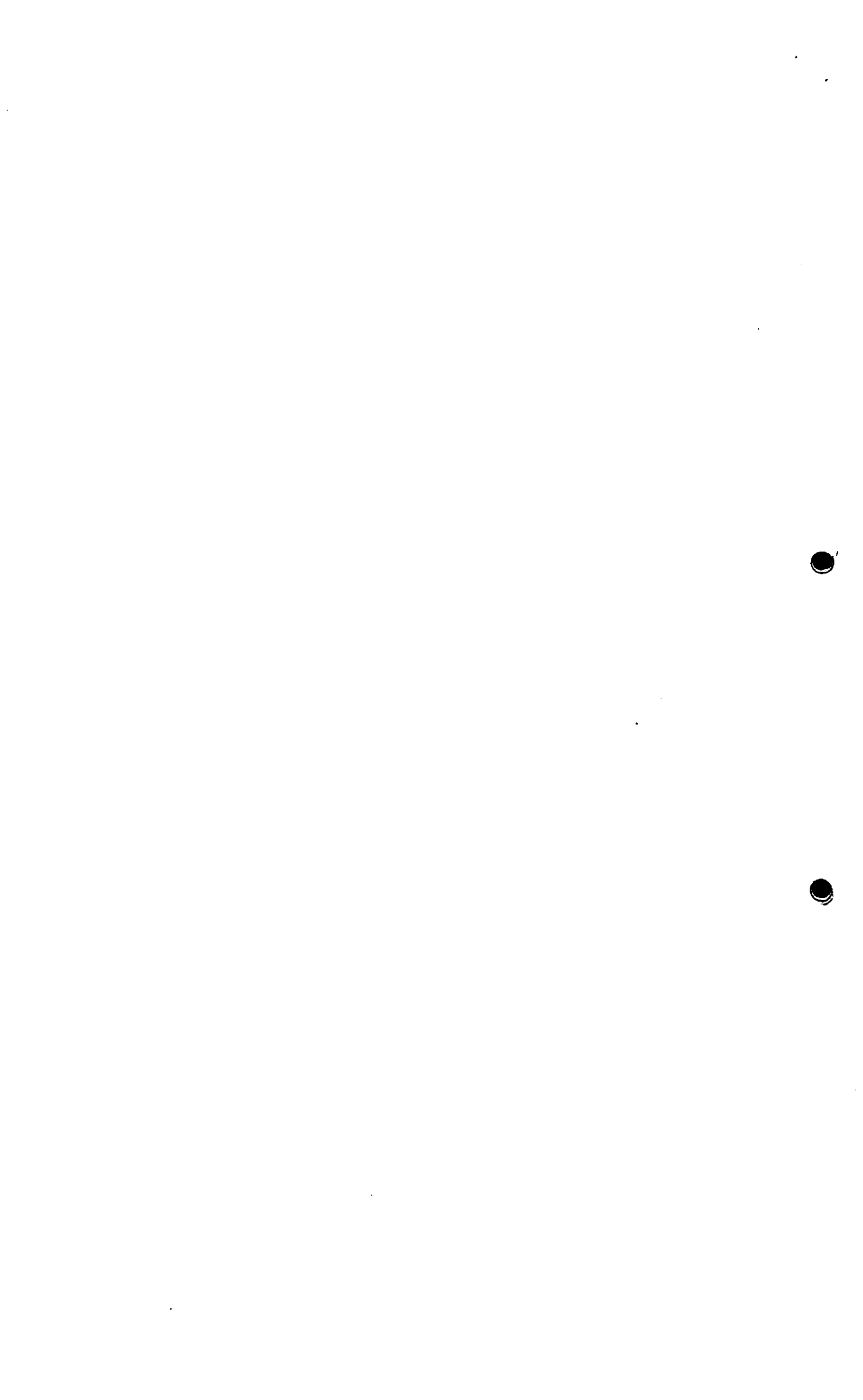
To

GSTIN No.24AAACM4454H1ZO.
M/s.Ford India Pvt.Ltd
Revenue Survey No.6, Village North Kotpura,
Tal. Sanand, Ahmedabad, Gujarat 382 170.

Note –

1. Only applicable fields may be filled up.
2. Column nos, 2,3,4 and 5 of the Table at serial no.5 i.e. tax rate, turnover and tax period are not mandatory
3. Place of Supply (POS) details shall be required only if the demand is created under the IGST Act.





Brief facts of the case :

1. M/s Ford India Private Limited, Revenue Survey No. 6, Village North Kotpura, Tal. Sanand, Ahmedabad, Gujarat-382170 (hereinafter referred as to "the said claimant") is registered with Central Goods & Services Tax Department having GSTIN No. 24AAACM4454H1ZO.
2. The said claimant had filed following refund claim Applications (GST RFD-01A) under Section 54 of CGST Act, 2017 on account of input tax credit (ITC) accumulated due to Zero rated supply of goods and services:

Table 1 : Refund claim applications filed by the claimant

Refund period	Application Reference(ARN) No.	Amount of Refund claim (Rs.)			
		IGST	CGST	SGST	Total
July 17	AB240717889402S	8245674	11014544	11014544	30274732
Aug. 17	AA2408178450329	242246089	66902644	66902644	376051377
Sept.17	AA2409177512623	765808834	301880220	301880220	1369569274

3. Vide following final refund orders (Form GST-RFD-06), the above refund claims were sanctioned to the claimant :

Table 2 : Refund claims sanctioned to the claimant

Refund period	Refund Order (Form-RFD-06) No. & Date	Amount of Refund Sanctioned (Rs.)			
		IGST	CGST	SGST	Total
July 17	007/FINAL/2018-19 dated 03.05.2018	7645397	10212695	10212695	28070787
Aug. 17	0008/Final/2018-19 dated 16.05.2018	241527719	66704247	66704247	374936213
Sept.17	0015/Final/2018-19 dated 31.05.2018	558490249	220530286	220530286	999550821

4. The said refund claims were sent for post-audit purpose to audit section. During the post audit, it was observed that *"the claimant preferred claim for the month of July-2017 whereas there was no balance in respect of IGST & SGST, besides balance lying in CGST is pertained to transitional credit benefit availed by them, which is not allowed as cash refund as per above sub-section (4) of Section 142 of CGST Act, 2017. Similar aspects also noticed in the claims for the months of August-2017 & September 2017 as the claimant have not sufficient balance at the end of tax period to debit against their IGST claimed amount. Hence, the claims sanctioned does not appear proper"*.

5. In view of the above, it appeared that the said claimant was not eligible for refund of Input Tax Credit on zero-rated supply of goods and services as the claimant was not having any unutilized balance of ITC in IGST, CGST and SGST and the balance lying in

the CGST pertained to the transitional credit benefit availed by them. The refund amount ineligible to the claimant calculated by audit as under :

Table 3 : Amount ineligible to the claimant

Refund period	Refund Order (Form-RFD-06) No. & Date	Refund Amount ineligible (Rs.)			
		IGST	CGST	SGST	Total
July 17	007/FINAL/2018-19 dated 03.05.2018	7645397	10212695	10212695	28070787
Aug. 17	0008/Final/2018-19 dated 16.05.2018	241527719	0	0	241527719
Sept.17	0015/Final/2018-19 dated 31.05.2018	263853397	0	0	263853397
		513026513	10212695	10212695	533451903

6. It was observed that the aforesaid Final Refund orders (RFD-06) had not been accepted by the department. The reviewing authority vide following Review Orders, have reviewed the refund sanctioned on the grounds mentioned below and filed Appeal before Commissioner(Appeals), Central Tax, Ahmedabad against the said refund orders :

Table 4 : Details of Review orders

Refund period	Refund Order (Form-RFD-06) No. & Date	Review order No. & Date	Appeal filed on
July 17	007/FINAL/2018-19 dated 03.05.2018	29/2018-19 dated 25.10.2018	31.10.2018
Aug. 17	0008/Final/2018-19 dated 16.05.2018	34/2018-19 dated 02.11.2018	06.11.2018
Sept.17	0015/Final/2018-19 dated 31.05.2018	36/2018-19 dated 20.11.2018	28.11.2018

(b) Grounds

- As per sub-section (3) of the Section 54 of the CGST Act, 2017 :
"a registered person may claim refund of any unutilized input tax credit at the end of any tax period."
- As per sub-section (4) of the Section 142 of the CGST Act, 2017 :
*"Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law: Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:
 Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act."*

3. In the months for which refund claim was filed, there was no balance of input tax credit lying unutilized.
4. The balance lying in CGST pertains to transitional credit benefit availed by the respondent which is not allowed as cash refund in terms of Section 142(4) of the CGST Act, 2017.
5. *The Adjudicating authority has erroneously sanctioned refund of Rs. 2,80,70,787/- for July 2017, Rs. 24,15,27,719/- for August 2017 & Rs. 26,38,53,397/- for September 2017 which needs to be recovered along with interest.*
7. The said appeal was decided by Commissioner(Appeals) vide OIA No. AHM-EXCUS-002-APP-186 to 188-18-19 dated 19.02.2019(issued on 26.03.2019) wherein the departmental appeal was allowed and impugned order was set aside. Therefore, in Form GST DRC-01, the said claimant was issued show cause notice GST/15-40/OA/2019 dated 15.10.2020 for recovery of erroneous refund amount paid to them. The said show cause notice was issued under section 73(1) of CGST Act 2017 where in the demand was raised as detailed below in the table.

Table-5

(Amount in Rs.)

Tax Period	Act	Place of supply (name of State)	Tax/ Cess	Others	Total
2	3	4	5	6	7
July, 17	Sec 73(1) CGST Act, 2017	-	Rs. 76,45,397/- (IGST), Rs. 1,02,12,695/-(CGST), Rs. 1,02,12,695/-(SGST)	Interest (to be ascertained)	Rs. 2,80,70,787/- (plus interest)
Aug. 17	-do-	-	Rs. 24,15,27,719/-(IGST)	-do-	Rs. 24,15,27,719/- (plus interest)
Sept. 17	-do-	-	Rs. 26,38,53,397/-(IGST)	-do-	Rs. 26,38,53,397/- (plus interest)
TOTAL			Rs. 51,30,26,513/- IGST, Rs. 1,02,12,695/- CGST, Rs. 1,02,12,695/- SGST	Interest (to be ascertained)	Rs. 53,34,51,903/- (plus Interest)

Defense Reply

8. The said claimant vide their letter dated 19.04.2021 submitted that for the month of July 2017, though they had completely utilized the IGST and SGST Credit for payment of IGST and SGST liability respectively. With respect to CGST credit, owing to migration of credit availed in erstwhile regime to the current regime (transitional credit), even after utilization of CGST credit, the claimant possessed accumulated ITC. Consequently, they had filed the refund claim of unutilized ITC for the period July-17. They stated for the month of August 2017, the IGST credit was fully utilised for payment of IGST. However, subsequent to payment of tax through ITC, the company had accumulated ITC of CGST and SGST.
9. They submitted that Commissioner(Appeals) order is yet to attain finality as they intend to prefer an appeal before Goods and Services Tax Appellate Tribunal ("GSTAT") which is yet to be constituted. They said that matter is pending for final disposal at Appellate

stage ,therefore, recovery of the erroneous refund should not be initiated and relied upon the following decisions.

- Commissioner of Customs, Chennai v ChemplastSanmar 2017 (354) ELT 513 (Mad)
- Dynamatic Technologies Limited v. UOI[2005 (186) E.L.T. 277 (Kar.)]

10. For the period of July-17 they had submitted that they had completely utilised the IGST and SGST credit availed during the said period for payment of tax, however, they were having unutilized CGST credit. They added that they had transitioned the closing balance of CENVAT credit to tune Rs. 1,63,15,92,468/- into the GST regime. They submitted that credit of CGST, SGST and IGST are all included within the ambit of 'input tax credit' under the IGST Act . They requested that refund of ITC should be computed at a consolidated level of CSGT, SGST and IGST credit and considering the fact that Noticee possess accumulated CGST credit in the month of July 2017. They relied on Para 3.1 of Circular No. 59/33/2018-GST dated 04.09.2018 issued by CBIC which specifically states that the refund "formula is [to be] applied on the consolidated amount of ITC.
11. For the period August-17 and Sept-17 they submitted that they were having unutilized ITC on a cumulative basis at the end of the period for which the refund claim were filed and they are entitled to refund of ITC in terms of the formula prescribed under Rule 89(4) of the CGST Rules, 2017.
12. They further submitted that in case, the refund amount is deemed to be erroneous, as per Rule 93 of CGST Rules, 2017, the ITC debited by the refund applicant under Rule 89(3) of the CGST Rules shall be re-credited to his electronic credit ledger by an order made in FORM GST PMT-03. Therefore, the issue is revenue neutral and no interest can be imposed. In this regard they relied on the decision of Hon'ble Madras High Court in the case of Refex Industries Limited, 2020-VIL-71-MAD.

Personal Hearing

13. Personal Hearing through virtual mode was held on 20.04.2021 which was attended by Shri Rohan Murlidharan, advocate who stated that they have migrated accumulated Cenvat Credit to the tune of Rs. 1,63,15,92,468/- into GST regime into CGST head of the electronic credit ledger . They submitted that they were exporting goods without payment of IGST under LUT in terms of section 16 of IGST Act,2017. He added that they prefer an appeal before Goods and Services Tax Appellate Tribunal ("GSTAT") which is yet to be constituted. They stated to keep the matter in abeyance to avoid parallel proceedings. Also, stated that they had rightly claimed the refund amount and they were eligible for refund. They requested to consider their written submission dated 19.04.2021 and drop the proceedings.

Discussion and Findings

14. I have carefully gone through the facts of the case, the material on record and the submissions of the claimant. The said claimant had filed refund claims under

section 54 of CGST Act 2017 on account of "accumulated ITC due to zero rated supplies". The said claims were processed by jurisdictional Deputy Commissioner and sanctioned the same as detailed above in table 2. The department then made observation that the refund was erroneously sanctioned to the claimant and preferred to file appeal before the Commissioner (Appeals), Central Tax, Ahmedabad. The Commissioner (Appeals) vide OIA No. AHM – EXCUS – 002 – APP - 186 to 188 - 18-19 dated 19.02.2019 (issued on 26.03.2019) allowed departmental appeal and held that the refund amount was erroneously sanctioned to the claimant. The impugned order was set aside to the extent it has sanctioned refund as mentioned in table 5 above.

15. In para 9 of the OIA No.AHM-EXCUS-002-APP-186 to 188 – 18-19 dated 19.02.2019 (issued on 26.03.2019), the Hon'ble Commissioner (Appeals) held that -

" The primary ground raised by the department is that when the mandate of section 54(3) of the CGST Act, 2017, clearly states that a registered person may claim refund of any unutilized input tax credit at the end of any tax period, the question of granting refund, especially when there is no balance of unutilized ITC credit, (refer Table A), is not tenable and therefore, legally not correct and hence, erroneous. I have no hesitation in stating that the refund in such cases can be sanctioned purely by the mandate of Section 54(3) of the CGST Act. 2017. The respondents submission that they had only filled up the columns pertaining to details of turnover and net input tax credit in respect of Statement 3A of the GST RFD 01A and the rest of the amounts were auto populated by the system and therefore he can not be blamed, is again not tenable. What is not legally permitted as refund can not be given via any other means, even if it be an error on the GST portal as far as computing refund is concerned. Notwithstanding any grounds raised, I am of the firm belief, that once there was no unutilized ITC credit lying in the balance in respect of the refunds erroneously granted (refer Table B), it was incumbent on the respondent not to have claimed it in the first place".

16. In the present case, there is no change in the view expressed by the Hon'ble Commissioner (Appeals) in his above Order-in-Appeal. Further, as on date, no stay is available against the Order-in-Appeal. The claimant's request for keeping the matter in abeyance till they filed appeal in Tribunal can not be considered at this stage.

17. The said claimant has emphasized in their reply that they possess accumulated ITC if computed at a consolidated level of CSGT, SGST and IGST credit. The said claimant submitted that they carry forwarded transitional credit from old regime to GST regime. I find that transitional credit cannot be claimed as cash refund and specifically denied by virtue of Section 142(4) of CGST Act, 2017, which has been done in the present case by including that ITC. I find that similar contention such as having unutilized input tax credit at the end of tax period and revenue neutrality of the matter was raised before the commissioner (Appeals). However, the Commissioner(A) stated that if the balance in the electronic credit ledger of the claimant is zero as in present case, the question of granting refund does not arise, because there was no unutilized credit in the first place. It is pertinent to mention here that all the facts and circumstances of the issue in light of

CGST Act, 2017 and rules made there under have already been dealt by Commissioner (Appeals) in the above mentioned OIA. I find that there is no change in the view of the Department and the facts of the case remains the same as per the decision of Commissioner (A) that the refund granted to the claimant is erroneous and is to be recovered along with applicable interest in terms of Section 73 of the CGST Act, 2017. Therefore, I am proceeding with the adjudication of the case.

18. Further, the said claimant stated that Commissioner(Appeals) order is yet to attain finality as they intend to prefer an appeal before Goods and Services Tax Appellate Tribunal ("GSTAT") which is yet to be constituted and the Department cannot initiate parallel proceedings to recover the refund amount. I find that the time limit for issuance of order is prescribed in Section 73(10) of the Act wherein it has been mentioned that *the order is to be passed within three years from due date of furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within three years from the date of erroneous refund*. Due to time limit given in Section 73 of the CGST Act, 2017 and keeping in view of the present legal position the matter can not be put in abeyance. The claimant has relied upon various case laws, however, the facts and circumstances of the said cases are different and can not be compared with the present case.

19. In view of the discussion above, I find that the claimant has claimed refund erroneously to the tune of Rs.53,34,51,903/- and the said erroneously paid refund is to be recovered along with interest in terms of Section 73 of the CGST Act, 2017.

20. In view of the above, I pass the following orders:-

ORDER

21. I confirm the recovery of erroneously refunded amount of Rs 53,34,51,903/- (Rupees fifty three crores thirty four lakhs fifty one thousand nine hundred and three only) as per Section 73 of CGST Act, 2017 along with applicable interest.

Date: 29.04.2021

Place: Ahmedabad

Signature:

Name: M. L. Meena

Designation: Additional/Joint Commissioner
CGST, Ahmedabad North.

Office Address: Custom House, Navrangpura,
Ahmedabad.

F.No. GST/15-40/OA/2019.

Copy to:

- (1) The Commissioner, CGST &CE, Ahmedabad-North
- (2) The Deputy. Commissioner, CGST &CE, Division-III, Ahmedabad-North
- (3) The Superintendent, AR-V, Division-III, CGST&CE, Ahmedabad-North
- (4) Guard File

