

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :  
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :  
: आंबावाडी, अहमदाबाद- 380015. :

क फाइल संख्या : File No : V2(30)56/Ahd-III/2016-17/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-222-16-17

दिनांक Date : 25.01.2017 जारी करने की तारीख Date of Issue

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-I) Ahmedabad

ग \_\_\_\_\_ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल  
आदेश सं \_\_\_\_\_ दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original: 547/Reb/Cex/APB/2016 Date: 27.04.2016 Issued by:  
Assistant Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

**M/s. Intas Pharmaceuticals Limited**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे  
बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as  
the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में  
पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार,  
वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को  
की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision  
Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building,  
Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the  
following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने  
में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में  
चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a  
warehouse or to another factory or from one warehouse to another during the course of  
processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क  
कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित  
है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside  
India of on excisable material used in the manufacture of the goods which are exported to any  
country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया  
माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of  
duty.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

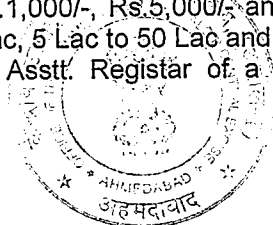
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,  
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



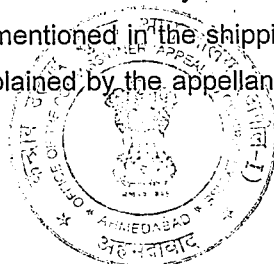
ORDER-IN-APPEAL

M/s Intas Pharmaceuticals Ltd., 2<sup>nd</sup> Floor, Chinubhai Centre, Off Nehru Bridge, Ashram Road, Ahmedabad (hereinafter referred to as 'the appellant') is a company, *inter alia*, engaged in the manufacture of pharmaceutical formulations falling under Chapter 30 of the First schedule to the Central Excise Tariff, 1985 (hereinafter referred to as CETA, 1985) and was also getting formulations manufactured on loan license basis from other manufacturers. The appellant had filed a rebate claim of **Rs.1,05,298/-** with the Assistant Commissioner, Central Excise, Gandhinagar Division, Ahmedabad-III (hereinafter referred to as 'the adjudicating authority') in respect of ARE-1 No. UMPL/INTAS/02 dated 07/04/2015 & Excise Invoice No.L1500008 dated 07/04/2015 as merchant exporters for export under claim of rebate to Ghana of the formulation 'INTAVITA CAPSULES' (hereinafter referred to as 'the impugned goods') manufactured by M/s Universal Medicare Pvt. Ltd., Plot No.810, G.I.D.C. Sarigam, District: Valsad (hereinafter referred to as 'M/s Universal').

2. A Query Memo F.No.V.30/16-73/M.Reb./CEX/2016 dated 15/03/2016 was raised with regards to the afore-mentioned Rebate claim of **Rs.1,05,298/-** and subsequently the adjudicating authority rejected this rebate claim by issuing Order-in-original No.OIO/547/Reb/Cex/APB/2016 dated 27/04/2016 (hereinafter referred to as 'the impugned order') holding that the ARE-1 number mentioned in ARE-1 as well as 'No Objection Certificate' submitted by M/s Universal (hereinafter referred to as 'N.O.C.') was 'SRGM/C-009/2015-16' that was not matching with the ARE-1 number shown in the Shipping Bill as 'SRGM/6' and thus the appellant had failed to make it clear that the goods had been exported.

3. The appellant has filed the present appeal invoking the following grounds of appeal:

- 1) The appellant had submitted all the prescribed documents for claiming rate of duty. All the details, except the ARE-1 No. mentioned in ARE-1 & Shipping Bills, are mutually corroborating with each other. The shipping bill and dated and container number as appearing on shipping bill and Airway bill and as endorsed by Customs officer on original & duplicate copies of ARE-1 are same, as prescribed in Notification No. 19/2004 CE(NT) & and the supplementary instructions. Details such as Export Invoice No. & date, FOB value of export and Name of Consignee & Buyer, as appearing on the Export Invoice, Airway Bill and Shipping Bill are same. Details such as Name of Product exported and the numbers of packages exported as appearing on the ARE-1, on Export Invoice and on Shipping Bill are same. These co-relations clearly establish that the goods covered by the ARE-1 have indeed been exported. The only mismatch is that the ARE-1 no. mentioned on ARE-1 and that mentioned in the shipping bill are different. The reason for this has also been explained by the appellants and



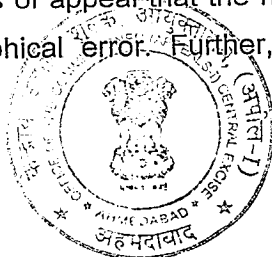
thus it is clear case of misreading "C" (written & over-written with ball-pen) as "6" by the Customs Officer, there being no fault of the exporter in this.

- 2) The export of goods under claim of Rebate of Central Excise duty is governed by Notification No. 19/2004-CE(NT) dated 06/09/2004 and Chapter 8 – Export under claim of Rebate of CBEC's Central Excise Manual of Supplementary Instructions. Despite the verification of original, duplicate & triplicate copies of ARE-1 being specifically prescribed in the notification & supplementary instruction, the Hon'ble High Court of Bombay, in its order dated 24/09/2014 in *M/S ZANDU CHEMICALS LTD., vs UNION OF INDIA AND ANR. – (2014-TIOL-1770-HC-MUM-CX)* has allowed the claim of Rebate of duty even when the assessee could not submit the original & duplicate copies of ARE-1 with the Rebate claim as the same were lost / misplaced.
- 3) In the case of the appellant, despite this typographical error being plainly evident from the documents and despite all the other details corroborating with each other to establish the export of goods, the adjudicating authority has passed the impugned order rejecting the Rebate claim, denying a substantial benefit for a minor typographical error on part of the Customs officer.

4. Personal hearing in the matter was held on 17/01/2017. Shri Hemang Vaishnav, Manager, Indirect Taxation appeared on behalf of the appellant and reiterated the submissions made in the grounds of appeal.

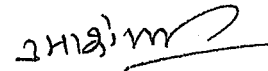
5. I have gone through the facts of the case and submissions made in the appeal memorandum. The limited point to be decided is whether the appellant is eligible for the Rebate claim that has been rejected by the adjudicating authority in the impugned order on the ground that the ARE-1 number mentioned on ARE-1 and the N.O.C. submitted by M/s Universal shown as "SRGM/C-009/2015-16" did not match with the ARE-1 number on the Shipping Bill shown as "SRGM/6". The adjudicating authority has further held in the impugned order that the appellant had failed to produce any amendment copy of Shipping Bill duly endorsed by the Customs authority in terms of Section 149 of the Customs Act, 1962.

6. As per law settled, the substantial condition for eligibility to Rebate is that Central Excise duty should actually have been paid on the goods manufactured and goods are actually exported. The claim of Rebate of duty cannot be denied on procedural lapses once these substantial conditions are fulfilled. This view has been upheld by Hon'ble Supreme Court in the case of *UNION OF INDIA vs. FARHEEN TEXTURISERS – 2015 (323) E.L.T.A23 (S.C.)*. In the present case, it is not clear from the impugned order whether the lapse pointed out regarding mismatch of ARE-1 number filed by the appellant and the ARE-1 number mentioned in the shipping bill actually amounts to the breach of substantive condition or whether it amounts to only a procedural lapse. The appellant has claimed in the grounds of appeal that the non-matching of ARE-1 numbers was owing to a typographical error. Further, there is no mention



regarding any verification carried out by the adjudicating authority to establish that the two different ARE-I numbers pertained to the same export or were separate ARE-1 for different consignments leading to rejection of the impugned claim of Rebate. This fact has to be verified at the level of the adjudicating authority and proper reasoning has to be given for denial of the substantive benefit of Rebate claim. The appellant on its part is free to explore the possibility of getting the shipping bill amended to the extent of getting the typographical error rectified at the end of Customs and get the correct ARE-1 endorsed in the said shipping bill. Needless to say that while considering the Rebate claim afresh, the adjudicating authority should pass a reasoned order clearly bringing out the grounds for denying or allowing the Rebate claim following the decisions of various Tribunals / Courts and in the light of the Instructions / Circulars issued by the department. The case is remanded back to the adjudicating authority to re-consider the Rebate claim filed by the appellant in de novo proceeding by following the principles of natural justice.

- अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
 The appeals filed by the appellant stand disposed of in above terms.



(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 25/01/2017

Attested



(K.P. Jacob)  
 Superintendent (Appeal-I)  
 Central Excise, Ahmedabad

BY R.P.A.D.

To,  
 M/s Intas Pharmaceuticals Ltd.,  
 2<sup>nd</sup> Floor, Chinubhai Centre,  
 Off Nehru Bridge, Ashram Road,  
 Ahmedabad – 380 009.

Copy to:

1. The Chief Commissioner of Central Excise Zone, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III.
3. The Additional Commissioner (Systems) Central Excise, Ahmedabad - III
4. The Dy./Asstt. Commissioner, Central Excise, Division -Gandhinagar, Ahmedabad-III
5. Guard file
6. P. A.

