



आयुक्त का कार्यालय, (अपीलस)  
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय  
Central GST, Appeal Commissionerate- Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
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क फाइल संख्या : File No : V2(GST)29 /EA2/North/Appeals/2018-19 / 10924 to 10929  
ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-002-APP-JC-03-19-20  
दिनांक Date : 27.05.2019 जारी करने की तारीख Date of Issue: 04/06/2019  
Passed by Shri Sachin Gusia Joint. Commissioner (Appeals) Ahmedabad  
Arising out of Order-in-Original 25/Final/2018-19, Date: 13/06/2018 Issued by: Deputy  
Commissioner, CGST, Div: IV, Ahmedabad North.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता  
Name & Address of the Appellant & Respondent

M/s. Oxygen Healthcare Research Pvt Ltd

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।

1. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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।

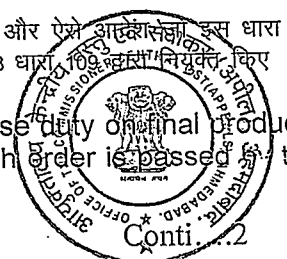
(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(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.

घ अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेशों के अंतर्गत इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 के अंतर्गत निर्यात 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- णबी/35-इ के अंतर्गत:-

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

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 दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 वहां 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 वहां 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 not withstanding the fact that the one appeal to the Appellant 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, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER IN APPEAL

The below mentioned departmental appeal have been filed by Deputy Commissioner, Division IV, CGST & Central Excise, Ahmedabad North Commissionerate, [for short -'adjudicating authority'] under Section 107 of the Central Goods and Services Tax Act, 2017, the details of which are as follows:

Name of the respondent	OIO No. & date issued under Form GST RFD 06	Review Order No. passed by the Commissioner, CGST & C.Ex.,Ahmedabad-North Comm'rate [in terms of Section 107(2) of the CGST Act, 2017]	Appeal No.
M/s.Oxygen Health care Research Pvt Ltd,Plot No.35 Pan chratna Industrial Estate,Sakhej-Bavla Road,Changodar, Ahmedabad.	25/FINAL/2018-19 dated 13.06.2018. F.No.IV/GST Refund/oxygen /13/2017-18	44/2018-19 dtd 20.12.2018	V2(GST)29 /EA-2/ North/ Appeals/2 018-19

2. Briefly, the facts are that the respondent, filed a refund claim of Rs. 6,51,583/- for IGST, Rs. 4,641/- for CGST and Rs. 4,641/- for SGST for the month of July,2017, seeking refund of Input tax credit lying unutilized on account of zero rated supplies made without payment of tax in terms of Section 54 of the Central Goods and Services Tax Act, 2017, read with Rule 89 of the Central Goods and Service Tax Rules, 2017. The adjudicating authority vide his impugned OIO dated 13.06.2018, sanctioned Rs. 6,51,583/- for IGST, Rs. 4,641/- for CGST and Rs. 4,641/- towards SGST.

3. During the course of post audit, it was observed that the refund claim is inadmissible as the turnover of zero rated supply of service mentioned in their RFD-01A was not correct in terms of details furnished in the refund claim papers viz. statement 3 u/r 89(2) and FIRC certification/documents from their bank regarding payment receipts. It is also observed that the respondent has received payments after the claim period; that the adjusted turnover should have been calculated in terms of Rule 89(4)(D) of the Central Goods and Service Tax Rules, 2004. Thereafter on the impugned OIO, having been examined for its legality and propriety, the Commissioner, CGST & C.Ex., North Commissionerate vide his aforementioned



Review Order, directed the Deputy Commissioner, Division-IV, CGST&C.Ex. Ahmedabad-North to file the aforementioned appeal, raising the following grounds:

- that the respondent had shown the turnover of zero rated supply of service as Rs. 1,64,38,530/- in their RFD-01A; that on scrutinizing the documents i.e. statement 3 u/r 89(2) and FIRC certification/documents from their bank regarding payment receipts, submitted by the respondent, it was noticed that they were not eligible for the said refund;
- that the respondent has received payments after the relevant period;
- that the impugned OIO be set aside and the erroneous refund of Rs. 6,51,583/- in respect of IGST, Rs. 4,641 of CGST and Rs.4,641/- towards SGST be recovered along with interest.

4. Personal hearing in respect of the appeal was held on 30.04.2019 wherein Shri Samir Patel, Sr. Officer, Account & Finance of the respondent appeared and assured to submit final written submission within two weeks time. Then after, the appellant submitted further written submission under letter received on 21.05.2019 alongwith annexure A showing invoice wise details of the amount Rs.1,64,38,530/- which was shown by them as turnover of zero rated supply of services during refund claim period.

5. I have gone through the facts of the case, the impugned original orders, the grounds raised in the review orders mentioned *supra* and the cross objections filed by the respondent and the oral averments raised during the course of personal hearing. I find that the only question to be decided is whether the refund granted to the respondent vide the impugned OIO, is erroneous or otherwise.

6. The matter deals with refund of unutilized input tax credit, and therefore before moving forward, let me first reproduce the relevant rules which enables a person to seek refund of tax in such a situation, viz.

**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;



(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.

[emphasis supplied]

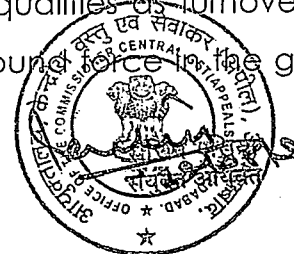
7. On going through Rule 89 of the Rule, *ibid*, I find that the refund is to be granted based on the formula, which is reproduced above. I find that the dispute is in respect of calculations of turnover of zero rated supply of services, which is clearly mentioned in Rule 89(4)(D). I find that zero rated supply of services would include:

[a] the aggregate of the payments received during the relevant period for zero-rated supply of services (+)

[b] 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 (-)

[c] advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period .

8. The departmental claim in review order para 9 [page 5] is that the claimant had received the payment of zero rated supply of services **after** the relevant period. Hence, going by the above, it could **not** have formed the part of turnover of zero rated supply of services. I observe from written submission provided by the respondent under letter dated 21.05.2019 that the value Rs.1,64,38,530/- shown as turnover of zero rated supply of services during refund claim period were in fact value of invoices issued in the month of July 2017. The actual realization/remittance in respect of said invoices value of Rs.1,64,38,530/- were received by the respondent in the month of August only which already stands mentioned by the respondent under said annexure to their submission dated 21.05.2019. In view of the above, I observe that the turnover of zero rated supply of services of Rs.1,64,38,530/- shown by the respondent in the month of refund claim period July 2017 is not correct as said amount qualifies as turnover of zero rated supply of services for August, 2017. I therefore, found ~~in~~ **in** the ground of




the departmental appeal wherein it is stated that the respondent has received the payment for zero rated supply of services after the relevant period of the zero rated supply of services. In terms of Rule 89(4)(D), only those payments which are received during the relevant period, can form part of the turnover of zero rated supply of services. In other words payments received during August, 2017 i.e. after the relevant period by the respondent, cannot form part of the turnover of zero rated supply of services for computing refund for the relevant period.


9. In view of the foregoing, I set aside the impugned OIO as the adjudicating authority has erroneously sanctioned the refund claim amounting to Rs. 6,51,853/- for IGST, Rs. 4,641/- for CGST and Rs. 4,641/- for SGST for the relevant period July, 2017.

10. The departmental appeal is allowed and the impugned OIO is set aside. The prayer of the department for the recovery of the erroneously sanctioned refund along with interest is also allowed.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
12. The appeal filed by the department-appellant stands disposed of in above terms.

  
(सचिन गुसिया) 28.05.19  
संयुक्त आयुक्त (अपील्स)  
Date : .05.2019

Attested

  
(D.A. Parmar  
Superintendent (Appeals),  
Central Tax, Ahmedabad



By RPAD.

To,  
Oxygen Health care Research Pvt Ltd,  
Plot No.35 Panchratna Industrial Estate,  
Sakhej-Bavla Road,Changodar, Ahmedabad.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad- 380 009.
3. The Commissioner, Central Tax, Ahmedabad North Commissionerate.
4. The Assistant Commissioner, Central Tax Division- III, Ahmedabad North Commissionerate.
5. The Assistant Commissioner, System, Central Tax, Ahmedabad North Commissionerate.
6. Guard File.
- ✓ 7. P.A.