



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)65/North/Appeals/2019-20 / 11944 to 11948

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-002-APP-JC-11-19-20

दिनांक Date : 19/08/2019 जारी करने की तारीख Date of Issue: 22/08/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Sachin Gussia**, Joint Commissioner (Appeals) Ahmedabad

ग _____ आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनांक : से सृजित

Arising out of Order-in-Original: 126, 127, 72/Final/19, Date: 29/04/2019 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. Intas Pharmaceuticals 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।

I. 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, 4th 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 प्रकिया 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
(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- 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, बहमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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 इ.ए-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 notwithstanding 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 हैं।

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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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 हैं

- (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 अर्ज़ी 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:

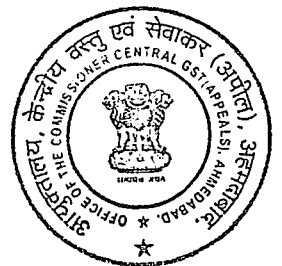
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ 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

This order arises on account of an appeal filed by M/s Intas Pharmaceuticals Ltd., Plot No.5 to 14, Pharmedz, Near Village Matoda, Sarkhej-Rajkot Highway No.8-A, Taluka Sanand, Ahmedabad-382210 (in short 'appellant') against the Refund Order No.72/Final/19 dated 29.04.2019 (in short 'impugned order') passed by the Deputy Commissioner, CGST & C.Ex, Division- IV, Ahmedabad North (in short 'adjudicating authority').

2. Brief facts of the case are that the appellant holding GST Registration number 24AAACI5120L3ZS had filed a refund application dated 07.12.2018 amounting to Rs.52,51,164/- under form RFD-01A for the month of December 2017 in respect of the refund of unutilized Input Tax Credit (ITC) on input services used in making zero rated supply of goods viz. export of goods without payment of Integrated Tax. The said claim was filed under the provisions of Section 54(3) of the CGST Act, 2017 read with Section 16 of the Integrated Goods and Service Tax Act, 2017 and Rule 89(4) of the Central Goods & Services Tax Rules, 2017. On the basis of certain discrepancies noticed in the refund application, the appellant was issued with a Notice in Form RFD-08 dated 07.02.2019 for rejection of application for refund. The said Notice was decided by the adjudicating authority vide the impugned Order dated 29.04.2019 wherein he, referring to the Government of India Circular No.37/11/2018-GST dated 15.03.2018, has re-calculated the eligible refund amount on the basis of total value of FOB value of the shipping bills covered in the refund claim and accordingly had finally sanctioned an amount of Rs.51,37,826/- (including the amount of Rs.46,24,043/- provisionally sanctioned vide Order dated 14.03.2019) as eligible refund and rejected an amount of Rs.1,13,338/- on the ground that the appellant had mentioned excess value of 'zero rated supply' in their RFD-01A.

3. Being aggrieved with the rejection part of the above order, the appellant has filed the present appeal. The appeal has been preferred mainly on the grounds that (i) the appellants had cleared goods for Export showing Transaction value in Tax Invoice which is CIF value of goods exported; (ii) the total value (Transaction Value) of zero rated supply in Tax Invoice shown by the appellants is to be matched with the total CIF value of the shipping bills and not with the FOB value of shipping Bills; and (iii) the refund of Rs.1,13,338/- is admissible to them as the CIF value shown in Tax Invoice and CIF value shown in the Shipping Bill is same and this Transaction Value is to be taken for the purpose of computing "Turnover of Zero Rated Supplies".

4. A personal hearing in the matter was held on 31.07.2019. Shri K.V. Subrahmanyam, Consultant, appeared before me on behalf of the appellant and reiterated the written submissions dated 31.07.2019 along with 3 Shipping Bill copies and relevant invoices.

5. I have gone through the records of the case, the impugned orders, the grounds of appeals and written submission filed by the appellant and records of personal hearing. The issue to be decided in these appeals is whether refund of unutilized Input Tax Credit under Section 54 of CGST Act read with Rule 89(4) of CGST Rules, curtailed and rejected by the lower adjudicating authority is correct or otherwise?

6. It is appellant's submission that while calculating eligible refund in terms of formula given at Rule 89(4) of CGST Rules, the adjudicating authority has wrongly worked out



'Turnover of zero-rated supply of goods' resulting in reduction in eligible refund amount. I find that the adjudicating authority has considered the FOB value of goods in the Shipping Bills which is lower than what is claimed by the Appellant. Thus, the bone of contention in this matter is "value" of exported goods reckoned by the lower adjudicating authority. The lower adjudicating authority has referred CBIC Circular No. 37/11/2018-GST dated 15.3.20-18 to decide refund due to Appellant.

7. I find that the adjudicating authority has held that the appellant had claimed higher export value as against value shown in the Shipping Bills. It is appellant's contention that value considered by them is CIF value whereas the adjudicating authority has considered FOB value reflected in the Shipping Bills. I find that Para 9 of Circular No. 37/11/2018-GST dated 15.3.2018 refers value to be adopted in case discrepancy in GST invoice and Shipping Bill which reads as under:-

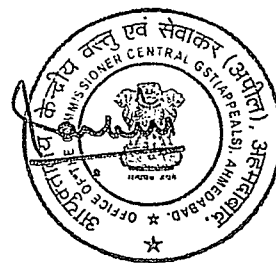
"9. Discrepancy between values of GST invoice and shipping bill/bill of export : It has been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under Section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill/bill of export.

9.1 During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill/bill of export should be examined and the lower of the two values should be sanctioned as refund."

(Emphasis supplied)

7.1 I find that CBIC vide above clarification while referring to the refund of unutilized ITC in respect of zero rated supplies of goods, has categorically explained that the value under GST invoice should normally be the transaction value under Section 15 of the CGST Act. It is clarified that lower of the two values is to be sanctioned in case of difference in value in Export Value declared in Shipping Bill and in GST Invoice. I further find that refund of ITC under Section 16(3) of IGST Act read with Section 54 of CGST Act refers to refund of ITC only and does not refer value of the goods. The formula stipulated under Rule 89 (4) of CGST Rules refers "Turn over of zero-rated supply of goods" which reads as under:-

"(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, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;"



7.2 I find that the provisions for refund of unutilized ITC refers value of the goods and not FOB value of the goods. The value of the goods is the transaction value of the goods under Section 15 of the CGST Act. Section 15 of the CGST Act stipulates value of taxable supply as transaction value and includes every incidental expenses.

7.3 Similarly, as per Section 14 of the Customs Act,1962, the value of the export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation. The appellant submitted that shipping bill represent CIF value which is in form of break-up of FOB Value+ Insurance + Freight which is their transaction value as appearing in their invoice. The adjudicating authority has not disputed that value in the Invoices and in Shipping Bills are different however, referred FOB value shown in the Shipping Bills.

7.4 Circular No. 37/11/2018-GST dated 15.3.2018 stipulates lower value in case discrepancy between value declared in Shipping Bill and in GST Invoices which is not the case here. Appellant submitted sample copies of Shipping Bills and relevant Invoices in support of their claim. After going through the submitted sample copies Shipping Bills and relevant Tax Invoices, I find that the value declared in the Tax Invoice is reflected in the Shipping Bill as Full Export Value and nature of contract is shown as CIF. It is not the case of the department that Shipping Bills are not showing value corresponding to Invoices raised by the Appellant reflecting the declared export value (i.e. Transaction value). The adjudicating authority has not recorded any finding rejecting Transaction Value declared/claimed by the Appellant. The adjudicating authority has also not recorded findings to the effect that Export Value verified from Shipping Bill is lesser than invoice value. Thus, I find force in appellant's argument that "Turnover of zero rated supply" considered by the adjudicating authority based on FOB value is not the Transaction value which includes Insurance and Freight amount and reflected in Shipping Bills too. I am, therefore, of the considered view that 'Turn over of zero rated supply of goods' computed by the adjudicating authority is not on the basis of transaction value as clarified by CBIC vide circular No.37/11/2018-GST dated 15.3.2018. The said Circular does not specify the value to be compared with GST Invoice in the corresponding Shipping Bill/Bill of Export as FOB value mentioned therein. It only specifies the value as value in the corresponding Shipping Bill/Bill of Export and so long as the GST Invoice Value is reflecting in the corresponding Shipping Bills/Bill of Export, the same is to be considered and consequently there does not arise any case of difference of value declared in the documents being compared. Value should be same as shown in GST export invoice which is reflected in GSTR-1 and reconciled with GSTR 3B and, that which is reflected in the respective Shipping Bill. The logic behind adjusting any FOB value or any arbitrary value is not clear and is done without any authority of the law. Thus without any express provisions to the contrary in the law & Rules made thereunder for the purpose of refund, adoption of any value other than Transaction Value is not legal & proper. Hence the impugned orders are required to be set aside to the extent refund is rejected on this ground.



