



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



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
फोन: 079-26305065 टेलीफैक्स: 079 - 26305136

By speed Post

क फाइल संख्या :File No : V2(GST)74&75/North/Appeals/2019-20/13084 to 13088

ख अपील आदेश संख्या :Order-In-Appeal No.: AHM-EXCUS-002-APP-13-14-19-20

दिनांक Date :18/11/2019 जारी करने की तारीख Date of Issue: 27/11/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mukesh Rathore, 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,Ref F.No. Div-IV/GST
Refund/Contract/100&101/18-19, 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. Contract Pharmacal Corporation India 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।

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 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 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- ए0बी/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 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 प्रतियों 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 अनुसूचि-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, 1988 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 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 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

Two appeals have been filed before the Appellate Authority under Section 107 of the Central Goods and Services Act, 2017 by M/s. Contract Pharmacal Corporation India Private Limited, Plot No.42, Panchratna Industrial Estate, Part-3, Changodar, Sarkhej-Bavla Highway, Ahmedabad-382213 [henceforth-'appellant'] holding GSTIN No.24AAFCC2957E1ZV against two letters dated 29.04.2019(henceforth, 'impugned letters') issued by the Deputy Commissioner CGST&CX, Division-IV, Ulariya, Sanand, Ahmedabad North as detailed below:

Sr. No.	Appeal No.	Letter F. No. and date
1	V2(GST)74/North/Appeals/2019-20	DIV-IV/GST Refund Contract/100/18-19 dated 29.09.2019
2	V2(GST)75/North/Appeals/2019-20	DIV-IV/GST Refund Contract/101/18-19 dated 29.09.2019

2. The facts of the case, in brief, are that the appellant filed two refund claims dated 07.08.2018 in the form RFD-01A of IGST Rs.14,31,923/- and Rs.13,38,899/- respectively paid by them on export of services during July and August,2017 being Zero rated supply of Services which was rejected under order No.105/FINAL and 106/FINAL both dated 24.09.2018 mainly for non compliance of queries raised under deficiency memo dated 21.08.2018 by the Deputy Commissioner CGST&CX, Division-IV, Ahmedabad-North. Both the appeals filed by the appellant against said orders dated 21.08.2018 were also rejected under OIA No.AHM-EXCUS-002-APP-171 TO 172-18-19 dated 25.03.2019 confirming the findings therein of the adjudicating authority.

3. Being aggrieved with the impugned letters, the appellant preferred these appeals contesting *inter alia*, that the Deputy Commissioner has erred by not appreciating and considering the observations made by Commissioner Appeal in OIA dated 25.03.2019 at para 5.3 &5.4; that clarification available under Circular No.70/44/2018-GST dated 26.10.2018 in respect of use of earlier ARN (Application Reference No) at the time of rectified refund application has not been taken into consideration; that non granting of provisional refund which is mandated by Section 54(6) of CGST Act,2017; no time limit has been prescribed for replying to deficiency memo; that passing of order RFD-06 is in violation of Circular No.59/33/2018-GST dated 04.09.2018. Etc.,



4. Personal hearing was held on 06.11.2019 wherein Shri Rohan Thakkar, Chartered Accountants appeared on behalf of the appellant, reiterated the grounds of appeal and submitted written submission dated 06.11.2019 stating mainly the grounds mentioned above.

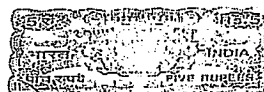
5. I have carefully gone through the facts of both the cases and submissions made in the appeal memorandums as well as during personal hearing. On perusal of records, I observe that initially, under orders No.105/FINAL and 106/FINAL both dated 24.09.2018 the refund claims were rejected by the adjudicating authority on the ground that the appellant did not submitted the reply to deficiency memo dated 21.08.2018 within stipulated time period. Appeals filed against said orders dated 24.09.2019 were rejected vide OIA dated 25.03.2019. Since, the present appeals have been preferred against the letter F.O.DIV-IV/GST Refund Contract/100/18-19 and F.No.DIV-IV/GST Refund Contract/101/18-19 both dated 29.09.2019, I reproduce contents of said letter below:

भारत सरकार वित्त मंत्रालय, राजस्व विभाग उप आयुक्त का कार्यालय केन्द्रीय जी० एस्० टी० एवं उत्पाद शुल्क, मण्डल-IV, अहमदाबाद उत्तर, द्वितीय तल, गोकुलधाम अर्किड, सरखेज-सानंद रोड, अहमदाबाद- 382210	 GOVERNMENT OF INDIA MINISTRY OF FINANCE, DEPARTMENT OF REVENUE OFFICE OF THE DEPUTY COMMISSIONER CENTRAL GST & CENTRAL EXCISE, DIVISION-IV, AHMEDABAD NORTH 2nd Floor, Gokuldham Arcade, Sarikhaj-Sanand Road, Ahmedabad - 382210	Page 120
Phone No. (02717) 238 200	Email: cgstdiv7904@gmail.com	FAX: (02717) 238 202

F. No. DIV-IV/GST, Refund/Contract/101/18-19

Dt. 29.04.19

To,
 Contract Pharmaceutical Corporation India Pvt Ltd
 Plot No 42, Panchratan Industrial Estate Part-3
 Changodar, Tal. Sanand, Ahmedabad
 Gujarat-382213



Refund application for the month of Aug. 2017 for export of services on payment of integrated Tax

Please refer to your letter dated 03.04.19 received by this office on 15.04.19 on the above subject.

In this connection, it is to mention that the refund claim resubmitted by you in light of the OIA No. AHM-EXCUS-002-APP-171 to 172 dated 25.03.19 passed by the Commissioner (A). Vide the said letter you have mentioned the relevant extracts of para 5.3 and para 5.4 of the said OIA. However, you fail to appreciate the decision taken by the Commissioner (A) in para (7) of the said order which is reproduces as under:

"In view of the above, I reject the appeals filed by the appellant and uphold the impugned orders."

Further, in none of the para of the said OIA, the Hon'ble Commissioner (A) has directed to resubmit a fresh application before this office.

In view of the above, I hereby returned your refund application, and treating REF-06 issued by this office on dated 24/09/18 still valid.

Encl: As above

Yours sincerely



[Signature]
 Yours sincerely
[Signature]

6. I observe that vide above letters dated 24.09.2019, the Deputy Commissioner has returned refund application to the appellant without entertaining. It is mentioned in said letter that "Further, in none of the para of the said OIA, the Hon'ble Commissioner(A) has directed to submit a fresh application before this office. In view of the above, I hereby returned your refund



application and treating RFD-06 issued by this office on 24/09/2018 still valid". It is further observed that above communications is not a speaking order describing reasons for rejection of refund claim. Whatever has been communicated under impugned letter relates to returning of refund application only. Refund claims are neither rejected nor sanctioned under this communications. In so far as the claims has not been taken up on its merit by the refund sanctioning authority and no decision on sanction/rejection of the same has been communicated, it would be unripe to conclude that refund has been rejected under impugned letter. I therefore, observe that there is no mention of decision or order of refund sanctioning authority on merit of the case i.e. decision or order on sanctioning/rejecting of refund claims is not available. In other word, the issue of eligibility of refund to the appellant has not been speak to by the lower authority under impugned letter.

7. In so far as decision/order under impugned letter is concerned, it is crystal clear that the **decision of returning the application** is taken therein. Therefore, the grounds advanced by the appellant against rejection of refund cannot became parts of the present appeal as impugned letter deals with the decision of returning of application only. In this regard, I reproduce below Section 107 of Central Goods and Service Tax Act,2017

SECTION 107. Appeals to Appellate Authority. — (1) Any person aggrieved by any **decision or order** passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority **may appeal** to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

7.1 Above provisions states that appeal can be made if any person is aggrieved by the **decision or order** passed by an adjudicating authority. The perusal of impugned letter reveals that it communicates the decision of returning back of refund application. The appellant was therefore, at his liberty to file appeal against said decision of returning the application. However, the present appeal has been preferred against decision of rejection of refund, which is not in consonance with the above mentioned provision which deals with appellate forum. It clearly reveals that the appellant is aggrieved with the decision of rejection of refund whereas impugned letters deals with decision of returning of refund claims. Looking to these disparity that the ground taken by the appellant are not related to the impugned letter against which the appeals have been preferred, the appeal is not maintainable. I further observe that ~~as well as~~



decision on sanction/rejection of refund being the field of the refund sanctioning authority, such aspects needs findings of said authority first.

8. It is also argued that the Deputy Commissioner has erred by not appreciating and considering the observations made by Commissioner Appeal in OIA dated 25.03.2019 at para 5.3 &5.4. I reproduce below said paragraphs for better understanding the arguments:

5.3 Said circular also clarifies that submission of application after deficiency memo shall be treated as a fresh application. It nowhere provides issuance of issuance of an order in Form RFD-06 in a case where Deficiency Memo RFD-03 has been issued. It is presumed that once Deficiency Memo complete in all aspect has been issued, it becomes mandatory for the claimant to re-submit the application after rectifying the deficiencies pointed out therein and if the application is not filed afresh by the claimant within thirty days of the communication of the Deficiency Memo, the proper officer shall pass an order in FORM GST PMT-03 and re-credit the amount claimed as refund through FORM GST RFD-01B if claim pertains to ITC unutilized due to zero rated supplies. Issuance of the order RFD-06 for rejection of refund claim was not required at the stage for the reasons that no fresh application of refund after rectifying the deficiencies pointed out has been filed by the claimant and no show cause notice was issued. Thus, the method prescribed mandates that one deficiency memo is issued, the claimant has to apply a fresh within thirty days in absence of which as a conclusiveness of the refund claim, the amount claimed shall be re-credited in electronic credit ledger of the claimant by the refund sanctioning authority without passing any formal rejection order. In this regard I observed that in the deficiency memo dated 21.08.2018 itself it is mentioned that *"you are advised to file a fresh refund application after rectification of above deficiencies."* I find that this remark was sufficient to communicate the conclusiveness of the refund application status to the claimant and no separate order RFD-06 at such stage was required.

5.4 In view of these, neither the Rule 93(1) of CGST Rule, 2017 nor the Circular No. 17/17/2017-Central Tax dated 15.11.2017 stipulates for passing of an order either rejecting or sanctioning the refund by the adjudicating authority in the FORM RFD-06 in such stage of processing the refund application. Therefore issuances of both the impugned orders RFD-06 were premature at such stage. Though the refund has been denied on account of non compliance of query memo, it would not be proper to consider that it has been rejected wrongfully. The action of issuance of RFD-06 order which was not required at this stage is nothing but an additional communication to the claimant as well as procedural error on the part of the adjudicating authority.



9. It can be seen from the above that the remark available under Deficiency Memo dated 21.08.2018 was reproduced under said OIA. I therefore, disagree with the plea of the appellant wherein it is stated that applying afresh was advised by Commissioner, Appeal under said OIA dated 25.03.2019. Further, said argument already stands replied by the Deputy Commissioner under impugned letter stating that- "**Further in none of the para of said OIA, the Hon'ble Commissioner(A) has directed to resubmit afresh application before this office.**" I find that this observation is proper as Commissioner Appeal nowhere under said order dated 25.03.2019 advised to file a fresh application.

10. Further, it would not be improper to mention here that in so far as remitting the issue back to the lower authority for deciding afresh is concerned, the position available under earlier provisions are changed under Central Goods and Service Tax Act, 2017. Sub section 11 of section 107 states as under:

SECTION 107. Appeals to Appellate Authority. —

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against **but shall not refer the case back to the adjudicating authority that passed the said decision or order :**

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order :

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

10.1 In view of the above legal provisions meant for first Appellate Authority, the case could have been also taken up for its fitness on remanding it back to original adjudicating authority in two situations. One, if no specific provisions as underlined above were available in the statutes as existed prior to GST regime and two, the appeal turn out to be against the decision of rejection of refund, which is not the case here. As discussed above, the present appeal has been preferred/immersed out of the **decision of returning the application of refund only** and not against decision of rejection of refunds.



11. In view of the above observations as well as non availability of findings of refund sanctioning authority on eligibility of the claims on its merit under impugned letter, I reject the appeals which has been preferred by the appellant against the decision of returning the refund application, without going into merit of refund claims.

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

Both the appeals filed by the appellant stands disposed of in above terms.

(Mukesh Rathore)

Joint Commissioner,CGST,Appeals

Date:

Attested

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



By R.P.A.D.

To,

M/s.Contract Pharmacal Corporation India Private Limited,
Plot No.42, Panchratna Industrial Estate, Part-3,
Changodar, Sarkhej-Bavla Highway,
Ahmedabad-382213.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad-North.
3. The Additional /Joint Commissioner, Central Tax (System), Ahmedabad North.
4. The Deputy Commissioner, CGST Division-IV,Ulariya,Sanand, Ahmedabad-North.
5. ✓ Guard File.
6. P.A. File

