



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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DIN20210764SW000000C570

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/622/2020-Appeal- O/o COMMR-CGST-APPL-  
AHMEDABAD / 1849 To 1853  
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-002-APP-ADC-14/2021-22  
दिनांक Date : 01.07.2021 जारी करने की तारीख Date of Issue : 06.07.2021

श्री मोहित अग्रवाल अपर आयुक्त (अपीलस) द्वारा पारित  
Passed by Shri. Shri. Mohit Agrawal, Additional Commissioner (Appeals)

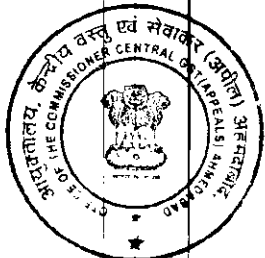
Arising out of Order-in-Original No RFD-06 No. ZS2408200410219 dated 29.08.2020  
passed by Assistant Commissioner, CGST & C.Ex Division-IV, Ahmedabad North

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

**Appellant-** M/s Otsuka Pharmaceuticals India Pvt. Ltd

**Respondent-** Assistant/Deputy Commissioner, CGST & C.Ex., Division-IV, Ahmedabad North.

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax ( Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.



**ORDER IN APPEAL**

M/s Otsuka Pharmaceuticals India Private Limited, Plot No. 199, 200, 201, 206 to 210, Vasna Chachrwadi, Tal. Sanand, Ahmedabad-382213, Gujarat, India (hereinafter referred to as the 'appellant') has filed the present appeal against RFD-06 OIO No. ZS2408200410219 dated 29.08.2020 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, CGST & Central Excise, Division-IV, Ahmedabad North, Ahmedabad (hereinafter referred to as 'adjudicating authority').

2.1. The facts of the case, in brief, are that the appellant is engaged in pharmaceutical products across India. The appellant sells the product in India as well as overseas market. The export of goods is done without payment of tax under the Letter of Undertaking (LUT). The appellant filed refund claim amounting to Rs. 2,97,90,333/- of accumulated input tax credit on account of export of goods/services without payment of tax for the period of October 2018 to December 2018 under CGST Act, 2017.

2.2. On preliminary scrutiny of the claim submitted by the applicant certain discrepancies were noticed for which a show cause notice in FORM-GST-RFD-08 dated 30.07.2020 issued to the appellant for rejection of refund claim amounting to Rs. 73,14,645/- on the main ground that, as per "Annexure B" it is found that the ITC on the invoices for the month of January-2018 to September-2018 were considered for calculation of refund amount claimed whereas application for refund filed is for the period October, 2018 to December, 2018. The ITC amounting to Rs. 2,41,30,940/- of the invoices for the month January 2018 to September 2018 is found inadmissible for the purpose of refund claim.

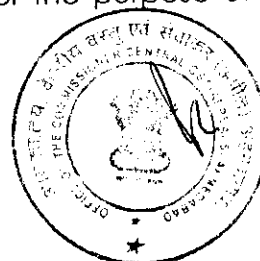
2.3 The appellant under FORM-GST-RFD-09 has submitted their reply to show cause notice on 06.08.2020 wherein they stated that during the period from October 2018 to December 2018, they were in receipt of few purchase invoices pertaining to period from January 2018 to September-2018. Since, the said invoices have been recorded in the period from October 2018 to December 2018, they have availed ITC of GST paid on these invoices in GSTR-3B filed for the said period of October 2018 to December 2018.



2.4 The adjudicating authority vide above impugned order decided the refund claim amounting to Rs. 2,97,90,333/- out of which sanctioned the refund amounting to Rs. 2,25,58,375/- and rejected the refund amounting of Rs. 72,31,958/- on account of invoices pertaining to earlier period under sub-section (9) of Section 54 of the Act read with sub rule (3) of Rule 92.

3. Being aggrieved, the appellant have filed the instant appeals on the grounds that:

- \* Rule 89 of CGST Rules provides for refund of unutilized ITC in case of zero rated supply of goods or services or both without payment of tax under bond or letter of undertaking. Refund of ITC once availed appropriately and reconciled with GSTR-2A cannot be denied.
- \* The Section 54(3) of CGST Act, 2017 allows a registered person to claim refund of any unutilized input tax credit at the end of any tax period in case of zero rated supplies made without payment of tax. In this regard, Rule 89(4) of the CGST Rules, 2017 provides for the methodology and calculation to claim refund of unutilized input tax credit in case of zero-rated supplies made without payment of tax;
- \* Clause B (Net ITC) & Clause F (Relevant period) of Rule 89(4) of CGST Rules, 2017 and para 61 of Circular 125/44/2019 - GST, it is amply clear that the refund of unutilized input tax credit shall be granted for Net ITC availed in GSTR-3B filed for the relevant period for which the refund claim has been filed.
- \* Once the input tax credit has been availed in GSTR-3B filed for the relevant period of refund claim, which includes input tax credit of invoices issued in earlier months, Rule 89 of CGST Rules, 2017 does not differentiate between the ITC of invoices relating to relevant period of GSTR-3B and ITC of invoices relating to earlier months, if the same has been rightly availed within the time line prescribed in Section 16(4) of the CGST Act, 2017, for the purpose of refund claim. Here, it is worth noticing that the GST legislation prescribes for refund of the ITC of invoices issued in earlier months and availed in subsequent months GSTR-3B. However, the refund of only partial amount has been granted to the appellant.
- \* The adjudicating authority grossly mistaken in interpreting the above referred clauses of Rule 89(4) of CGST Rules, 2017, as Net ITC means input tax credit of invoice issued during the relevant period for which the refund claim has been filed, instead of interpreting the same as input tax credit availed during the relevant period for which the refund claim has been filed. Hence, it is submitted that the balance amount, not granted as refund due to misinterpretation on part of the adjudicating authority, be granted to the Appellant. Once the ITC has been appropriately availed in the returns filed, rejection of the same for the purpose of granting refund is unjustified.



\* The appellant relied upon the judgement of Hon'ble CESTAT Bangalore in case of M/s Wipro Technologies vs. Commissioner of Service Tax [TS 986CESTAT- 2020-ST], relating to erstwhile law of Service Tax, wherein the Hon'ble CESTAT held that where the availment of credit in the first instant was not disputed then it is not open for the Department to deny the same when a refund is file.

4. In the virtual personal hearing held on 24.03.2021 through virtual mode. Sh. Viput Mittal and Sh. Nirmal Shah both CA appeared on behalf of the appellant for hearing and re-iterated the submissions made in appeal memorandum.

5. I have carefully gone through the facts of the case and submissions made by appellant in appeal memorandum. The limited issue which requires to be decide in the case is whether the part refund amount of Rs. 73,14,645/- have been correctly rejected by the adjudicating authority in view of provision of clause B & F of Rule 89(4) of CGST Rules, 2017 read with of para 36 of Circular No. 125/44/2019-GST dated 18.11.2019 and clarification issued vide para 5 of Circular No. 135/05/2020-GST dated 31.03.2020 or otherwise?.

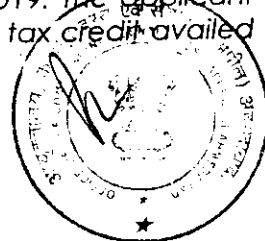
6.1 It is observed that the whole dispute of amount of refund, for which appeal has been preferred, arose on account of clarification issued under CBIC Circular No. 125/44/2019-GST dated 18.11.2019 and para 5 of Circular No. 135/05/2020-GST dated 31.03.2020, relevant part of which is reproduced below:

**Para 36 of Circular No. 125/44/2019-GST dated 18.11.2019:-**

Subject: Fully electronic refund process through FORM GST RFD-01 and single disbursement – regarding

**Guidelines for refunds of unutilized Input Tax Credit :**

36. Applicants of refunds of unutilized ITC, i.e. refunds pertaining to items listed at (a), (c) and (e) in para 3 above, shall have to upload a copy of FORM GSTR-2A for the relevant period (or any prior or subsequent period(s) in which the relevant invoices have been auto-populated) for which the refund is claimed. The proper officer shall rely upon FORM GSTR-2A as an evidence of the account of the supply by the corresponding supplier(s) in relation to which the input tax credit has been availed by the applicant. Such applicants shall also upload the details of all the invoices on the basis of which input tax credit has been availed during the relevant period for which the refund is being claimed, in the format enclosed as Annexure-B along with the application for refund claim. Such availment of ITC will be subject to restriction imposed under sub-rule (4) in rule 36 of the CGST rules inserted vide Notification No. 49/2019-CT dated 09.10.2019. The applicant shall also declare the eligibility or otherwise of the input tax credit availed



against the invoices related to the claim period in the said format for enabling the proper officer to determine the same. Self-certified copies of invoices in relation to which the refund of ITC is being claimed and which are declared as eligible for ITC in Annexure – B, but which are not populated in FORM GSTR-2A, shall be uploaded by the applicant along with the application in FORM GST RFD 01. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are available in FORM GSTR-2A of the relevant period uploaded by the applicant.

**Para 5 of Circular No. 135/05/2020-GST dated 31.03.2020:**

Subject: Clarification on refund related issues – Reg.

**5. Guidelines for refunds of Input Tax Credit under Section 54(3)**

5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.

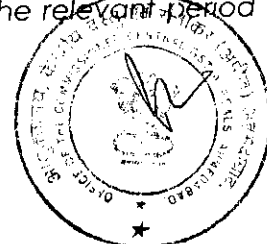
6.2. Relevant part of provisions of para B and F of Rule 89(4) of CGST Rules, 2017 are shown as under :

"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, -

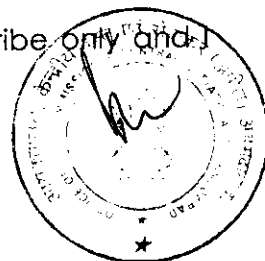
- (A) "Refund amount" means the maximum refund that is admissible;
- (B) **"Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;**
- (C) "Turnover of zero-rated 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;
- (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 turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding -
- (a) the value of exempt supplies other than zero-rated supplies, and
- (b) the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both, if any, during the relevant period;
- (F) **"Relevant period" means the period for which the claim has been filed.**
- [(4A) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax, dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1305(E), dated the 18th October, 2017, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.
- (4B) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1320(E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1321(E), dated the 23rd October, 2017 or notification No. 78/2017-Customs, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1299(E), dated the 13th October, 2017, or all of them, refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

7. As provided under CGST Rules and above circular, "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 and relevant period as per clause F of Rule 89(4) of CGST Rules, 2017 means the period for which the claim has been filed." It is observed that the appellant has availed and considered the ITC of goods and service tax amounting to Rs. 2,42,30,940/- in respect of invoices for the month of January-2018 to September-2018 whereas the refund application filed for the period from October-2018 to December-2018. Thus, the adjudicating authority correctly calculated net ITC availed during the relevant period in view guidelines and clarification issued under the para 36 of Circular No. 125/44/2019-GST dated 18.11.2019 and para 5 of Circular No. 135/05/2020-GST dated 31.03.2020 and correctly calculated the refund admissible as per formula prescribed under Rule 89(4) of CGST Rules, 2017.

I observe that in the said circulars, clarification and guidelines for electronic submission and processing of refund claims have been prescribed only and



observe that clarification issued under Circulars holds good and the same are entirely binding on lower authority. Therefore, I do not find any reason to interfere in the impugned order.

8. In view of the facts discussed hereinabove, I do not find any merit in the grounds raised by the appellant. Accordingly, I reject the appeal filed by the appellant and uphold the impugned order.

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

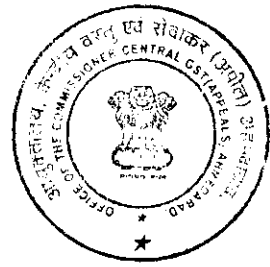
Mohit Agrawal  
(मोहित अग्रवाल)

अपर आयुक्त (अपील्स)

Date : 06.2021

Attested

(Atulkumar B. Amin)  
Superintendent(Appeals),  
Central Tax, Ahmedabad



To,

M/s Otsuka Pharmaceuticals India Private Limited,  
Plot No. 199, 200, 201, 206 to 210,  
Vasna Chachrwadi, Tal. Sanand,  
Ahmedabad-382213.

Copy to:

- (1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- (2) The Pr. Commissioner, Central GST, Ahmedabad North.
- (3) The Assistant Commissioner, Central GST, Division-IV, Ahmedabad North.
- (4) The Assistant Commissioner(RRA), Central GST, Ahmedabad North.
- (5) Guard file
- (6) P.A. file.