



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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DIN20210764SW000091439B

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/19 & 21/2020-Appeal/1854 T-01659

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-002-APP-ADC-19 to 20/2021-22  
दिनांक Date : 01.07.2021 जारी करने की तारीख Date of Issue : 06.07.2021

श्री मोहित अग्रवाल अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mohit Agrawal, Additional Commissioner (Appeals)

ग Arising out of following Order-in-Original Nos, All passed by Assistant/Deputy Commissioner, Central GST, Division-VI, Ahmedabad-North:

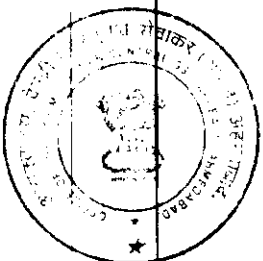
Sr. No.	OIO/RFD-06 No.	Dated:
1	128/Final/2019-20	28.11.2019
2	135/Final/2019-20	28.11.2019

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

**Appellant-** Assistant/Deputy Commissioner, Central GST, Division-VI, Ahmedabad-North.

**Respondent-** Intas Pharmaceuticals Ltd..

(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**

The Department, through the Assistant Commissioner, Central GST & C.Ex, Division-VI, Ahmedabad North, have filed following two appeals as per details given in table-1 below against the adjudication orders [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, Central GST & C.Ex, Division-VI, Ahmedabad North [hereinafter referred to as "adjudicating authority"] in the case of M/s. Intas Pharmaceuticals Ltd., Sub Plot No. A, Final Plot No. 255, TPS No. 38, Near Thaltej Cross Road, S.G. Highway, Ahmedabad [hereinafter referred to as "Respondent"]].

**TABLE-1**

Sr. No	RFD-06 No	Order	RFD-06 Order Date	Amount of Refund (Rs.)	Date of filing claim	Period of refund	Review Order No.	Review Order Date	Sanctioned amount Rs
1	2	3	4	5	6	7	8	9	
1	128/Final/2019-20		28.11.19	232877130/-	23.11.18	Sept-2019	032/2020-21	31.08.20	231730652/-
2	135/Final/2019-20		28.11.19	3028057/-	25.04.19	Feb.-2019	034/2020-21	05.08.20	3028058/-

2.1 Briefly stated, the facts of the case are that the Respondent is registered with Central Goods & Services Tax Department having GSTIN No. 24AAAC15120L1ZU had filed two refund claims for IGST, CGST and SGST as mentioned in above table under Section 54 (3) of the CGST Act, 2017 on account of input tax credit (ITC) accumulated due to inverted Tax Structure on export of Goods & Service without payment of Integrated Tax. The adjudicating authority has sanctioned the refund claims as mentioned in column 9 of above table-1 vide imposed orders.

2.2. The Assistant Commissioner, Audit Cell, CGST & C.EX, Ahmedabad North during post Audit of the above said refund claims observed that the refund claims were filed after the issuance of Circular No.59/33/2018-GST dated 04.09.2018. As per para 3.2 of the said circular, the entire amounts of refunds were to be debited equally from electronic credit ledgers i.e IGST, CGST and SGST of the appellant. The details of Balance in ledger at the end of tax period & at the time of filing claim, Amount to be debited, Amount actually debited and eligible refund claims amounts are mentioned in Table-2 below:

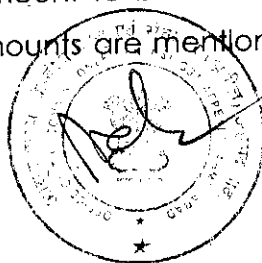


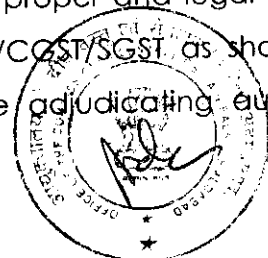
TABLE-2

Sr No	Amount of Refund claimed(Rs.)			Amount of Refund Sanctioned			Balance in ledger at the end of tax period & at the time of filling claim			Amount to be debited as per Circular 59/33/2018-GST dated 14.09.2018		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
1	2			3			4			5		
1	13,01,73,436/-	5,13,51,847/-	5,13,51,847/-	12,91,05,572/-	5,13,12,540/-	5,13,12,540/-	13,88,49,213/-	86,99,45,530/-	24,08,44,000/-	13,88,49,213/-	4,70,13,958/50	4,70,13,958/50
2	0	15,14,029/-	15,14,028/-	0	15,14,029/-	15,14,029/-	6,64,99,461/-	73,18,64,948/-	10,51,06,861/-	30,28,057/-	0	0

Sr No	Amount actually debited by the claimant			Refund amount rejected			Eligible refund amount			Excess amount sanctioned (amount under dispute)		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
	6			7			8			9		
1	13,01,73,436/-	5,13,51,847/-	5,13,51,847/-	10,67,864/-	39,307/-	39,307/-	12,91,05,572/-	4,69,74,651/50	4,69,74,651/50	0	43,37,888/50	43,37,888/50
2	0	15,14,029/-	15,14,028/-	0	0	0	0	0	0	0	15,14,029/-	15,14,029/-

2.3 From the above table-2, it is observed by the Audit that the adjudicating authority had sanctioned inadmissible/excess amount of the refund claim in view of Circular No. 59/33/2018-GST dated 04.09.2018 which required to be recovered from the respondent.

3. Thereafter, the impugned orders being examined for its legality and propriety by the Commissioner, CGST & CEX, Ahmedabad-North Commissionerate and found that the same are not proper and legal as the claimant had to debit the amount of refund IGST/CGST/SGST as shown in table-2 above in term of circular supra. Thus, the adjudicating authority



granted/sanctioned excess refund as shown in table-2 above and hence, the impugned order have been reviewed vide Review Orders as mentioned in Table-1 and directed the adjudicating authority to file the aforementioned appeal raising the grounds that the impugned order is issued in violation of para 3.2 of Circular No. 59/33/2018-GST dated 04.09.2018 which states that :

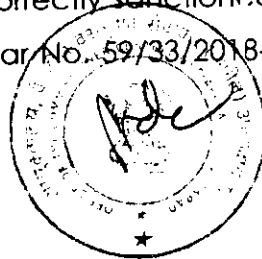
*"3.2 After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the claimant in the following order:*

- a) Integrated tax, to the extent of balance available,*
- b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger ' say, Central tax), the differential amount is to be debited from the other electronic credit ledger( i.e State tax/ Union Territory tax, in this case)."*

4.1. Personal hearing in the matter was granted on 23.03.2021, 16.04.2021 and 10.06.2021. Nobody appeared for personal hearing.

4.2. The respondent in their cross objection dated 25.09.2020 stated that the amount held recoverable as per the appeal filed, then a matching amount is payable to them and hence a revenue neutral position. As the revenue neutral position, neither CGST and SGST nor interest is recoverable from the respondent. Also stated that the eligibility of refund is determined as per the provisions of Rule 89 of CGST Rules, 2017 and such procedural Circulars neither determine nor dictate eligibility for refund. The respondent further submitted cross objection vide letter dated 09.06.2021 and referred Circular No. 125/44/2019-GST dated 18.11.2019 issued by CBIC and requested to consider the same.

5. I have carefully gone through the facts of the case and submissions made by the department in the Appeal Memorandum and also cross examination filed by the respondent. It is observed that the respondent did not attend any of the three personal hearing in the matter and therefore, I take up the issue for decision based on evidences on record after duly following principle of natural justice. The limited issue which requires to be decided in the case is whether the refund have been correctly sanctioned by the adjudicating authority in view of para 3.2 of Circular No. 59/33/2018-GST

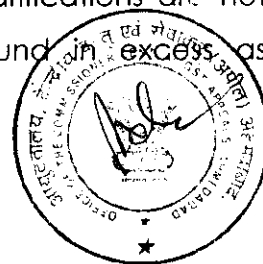


dated 04.09.2018 or otherwise?. I find that the whole dispute of amount of refund, for which appeal has been preferred, arose on account of clarification issued under CBIC Circular No. 59/33/2018-GST dated 04.09.2018, relevant part of which is reproduced below:

3.2. After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the claimant in the following order:

- a) Integrated tax, to the extent of balance available;
- b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).

6. As provided under above circular, while filling refund claim, the claimant was required to debit from Electronic credit ledger, IGST to the extent balance available therein and then after Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case). It is observed that the appellant has debited entire amount from SGST in three cases above and in one case majority amount from CGST. In none of the above claim, sequence prescribed under circular supra has been followed which ultimately resulted in excess sanction of refund to the tune of the amount of dispute mentioned in table 2 above. As a result of this unspecified/improper method, excess refund to the tune of the amount mentioned in table 2 above has been sanctioned by the adjudicating authority. Furthermore, I have gone through the Circular No. 125/44/2017-GST dated 18.11.2019 relied upon by the respondent in their cross objection and observe that in the said circular only guidelines for electronic submission and processing of refund claims have been prescribed and I observe that clarification issued under Circular No. 59/33/2018-GST dated 04.09.2018 holds good and the same are entirely binding on lower authority. Therefore, the impugned orders which are issued in violations of the clarifications are not legally sustainable to the extent, they sanctioned refund in excess, as discussed above.



7. In view of the discussion above, I allow the appeals to the extent the claim of excess amount of refund and set aside the impugned orders to the extent it sanctioned refund in excess as mentioned in table 2 above.

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

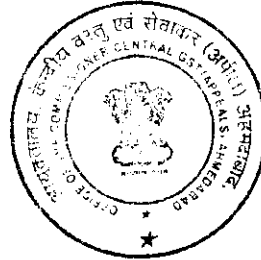
All the four appeals filed by the appellant stands disposed of in above terms.

*Mohit Agrawal*  
11/7/21

(Mohit Agrawal)  
Additional Commissioner,  
CGST(Appeals), Ahmedabad.  
Date: 07.07.2021

Attested

*(Signature)*  
(Atulkumar B. Amin)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad



By R.P.A.D.

To,

1. M/s. Intas Pharmaceuticals Ltd.,  
Sub Plot No. A, Final Plot No. 255,  
TPS No. 38, Near Thaltej Cross Road,  
S.G. Highway, Ahmedabad
2. The Assistant Commissioner,  
CGST & Central Excise, Division-VI, Ahmedabad-North,  
3<sup>rd</sup> Floor, Sahajanand Arcade,  
Near Helmat Circle, Memnagar, Ahmedabad-380052.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan  
Ashram Road, Ahmedabad.
3. The Commissioner, Central GST & C.Ex, Ahmedabad-North.
4. The Assistant Commissioner, Central GST & C.Ex, Division-VI,  
Ahmedabad North
5. The Additional /Joint Commissioner, Central Tax (System),  
Ahmedabad-North.
6. Guard File.
7. P.A. File