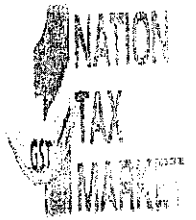




आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
Phone: 079-26305065 Fax: 079-26305136  
E-Mail : commrappl1-cexamd@nic.in



**By Regd. Post**

DIN NO. : 20211264SW000027682D

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/186/2021-APPEAL / 4515 70 152
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-JC-67/2021-22 and 01.12.2021
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, संयुक्त आयुक्त अपील Shri Mihir Rayka, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	01.12.2021
(ङ)	Arising out of Order No. FORM-GST-RFD-06 having ARN AA241120015971LT dated 29.12.2020 issued by The Deputy Commissioner, CGST, Division-VI Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Intas Pharmaceuticals Ltd. (GSTIN - 24AAACI5120L3ZS) Address :- Corporate House, Near Sola Bridge, S G Highway, Thaltej, Ahmedabad - 380054

(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) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent 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.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .

**ORDER-IN-APPEAL****Brief facts of the case :**

M/s. Intas Pharmaceuticals Limited, 5 to 12, Pharmez, Sarkhej-Bavla Highway, Tal. Sanand, Matoda, Ahmedabad - 382213, Gujarat, (*hereinafter referred as 'appellant'*) has filed the present appeal against the Order dated 29.12.2020 passed in the Form-GST-RFD-06 (*hereinafter referred as 'impugned order'*) rejecting refund of Rs.5,67,805/-, issued by the Deputy Commissioner of CGST & C. Ex., Division - IV, Ahmedabad North Commissionerate (*hereinafter referred as 'adjudicating authority'*).

**2(i).** The '*appellant*' is holding GST Registration No.24AAACI5120L3ZS. On 06.11.2020 vide ARN No. AA241120015971LT, the '*appellant*' had filed a Refund claim of Rs.2,77,17,388/- for the period April-2020 to June-2020 in respect of Export of Goods/Services without payment of Tax (Accumulated ITC) under GST-RFD-01. In response to said refund claim a Show Cause Notice was issued to them on 23.11.2020 for following discrepancies :

- I. *Mismatch in Zero Rated Supply Turnover. In RFD-01/Statement 3A it is mentioned Rs. 381,17,77,697/- whereas on verification the details with Shipping Bills, the FOB value of the corresponding invoices/shipping bills comes to Rs. 373,47,43,384/-. It appears that Rs.7,70,34,313/- is considered more as Zero Rated Supply Turnover for the purpose of calculation of refund.*
- II. *As per "Annexure B" it is found that the ITC on the invoices for the month of February,2020 and March,2020 were considered for calculation of refund being claimed whereas application for refund filed is for the period April,2020 to June,2020. The ITC amounting to Rs.7,808/- of the invoices for February,2020 and March,2020 is found inadmissible for the purpose of refund being claimed. Therefore, why the proportionate refund claim amounting to Rs.5,67,805/- should not be disallowed.*

**2(ii).** During the personal hearing before the '*adjudicating authority*' on 24.12.2020 the *appellant* has reiterated their point-wise reply dated 01.12.2020. As regards to point No. I above, the *appellant* has stated in their reply dated 01.12.2020 that they have cleared the goods for exports



showing Transaction Value in the Tax Invoice, which is CIF value of goods exported. According to *appellant* the total value (Transaction Value) of Zero rate supply in the Tax Invoice shown is matched with the total CIF Value of Shipping Bills and not with the FOB value of Shipping Bills. The *adjudicating authority* in this regard referred para 47 of CBIC Circular No. 125/44/22019-GST dated 18.11.2019. The *adjudicating authority* has noticed that claimant has considered CIF Value Rs.381,17,77,697/- whereas by verifying details at Icegate Portal noticed FOB Value of corresponding Shipping Bills as Rs.373,47,43,384/-. Accordingly, in terms of aforesaid Circular of CBIC the *adjudicating authority* has considered lower of the above two values i.e. Rs.373,47,43,384/- for calculating the eligible amount of refund. Consequently, noticed that claimant has considered Rs.7,70,34,313/- more as Zero Rated Supply Turnover for the purpose of calculation of refund amount. The *adjudicating authority* has observed that the CIF Value adopted by claimant for calculation of refund amount is not proper and not in accordance with para 47 of CBIC's Circular No. 125/44/22019-GST dated 18.11.2019.

**2(iii).** Further as regards to point No. II above, the *adjudicating authority* has noticed that the claimant has availed ITC of Rs.7,808/- on the invoices of February-2020 and March-2020 whereas refund application pertains to period of April-2020 to June-2020. So, in terms of CBIC's Circular No. 125/44/22019-GST dated 18.11.2019 and Circular No. 135/05/2020-GST dated 31.03.2020 the *adjudicating authority* has observed that said ITC is inadmissible for the purpose of refund claim. The *adjudicating authority* has referred Rule 89 (4) of the CGST Rules, 2017 and observed that as per clause (B) of said rule Net ITC means ITC availed during relevant period. As per clause (F) relevant period means "the period for which the claim has been filed".

In view of above observation the *adjudicating authority* has rejected the refund claim of Rs.5,67,805/-.

**3(i).** Against the said rejection of refund claim of Rs.5,67,805/- the *appellant* has preferred present appeal on 13.01.2021. In the appeal memo the *appellant* has stated that refund of Rs. 5,67,805/- rejected on following grounds

1. Rs.5,59,997/- rejected in view of para 47 of Circular No. 125/44/2019-GST dated 18.11.2019.

2. ITC of Rs.7,808/- considered inadmissible as same was claimed on account of invoices of past period.

**3(ii).** The *appellant* has stated in grounds of appeal that the value mentioned in Shipping Bills are same in both GSTR 1 and RFD 01. *Appellant* has referred Section 15 of the CGST Act, 2017 and stated that value of supply of goods shall be the transaction value. The Transaction Value between Exporter and Importer therefore, depends on INCO Terms agreed between them such as FOB, C&F, CIF etc. Such Transaction Value is to be mentioned in the Tax Invoice. The *appellant* has further referred CBIC Circular No. 37/11/2018-GST dated 15.03.2018 and stated that "*If the Exporter is Exporting Goods on CIF Basis (Transaction Value), the CIF Value in Shipping Bill and CIF Value in Tax Invoice will be same. In such case also question of 'lower of the two values' for sanction of refund would not arise.*" Considering same the *appellant* has stated that they have exported goods on CIF Basis, therefore, the Taxable Value (Transaction Value) in Tax Invoice and CIF Value in Shipping Bill would be same. In this regard, the *appellant* has further referred the Section 4 of Central Excise Act, 1944 as well as Section 37B order No. 59/1/2003-CX. Dated 03.03.2003 of the CBEC.

**3(iii).** Considering the above facts the *appellant* has stated in the grounds of appeal that under Central Excise provisions the Transaction Value is based on "place of removal", whereas under GST the Transaction Value is based on "value of supply of goods which is the price actually paid or payable for the said supply of goods" where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

The *appellant* has further stated that they have charged Transaction Value in Tax Invoices which matching with CIF Value in corresponding Shipping Bills. In support of their defense the *appellant* has submitted 5 specimen copies of Shipping Bills and Corresponding Tax Invoices. It is further stated in the grounds of appeal that the total value of Zero Rated Supply in Tax Invoice is to be matched with the total CIF Value of the Shipping Bills and not with the FOB Value of Shipping Bills.

**3(iv).** The *appellant* has further stated in the grounds of appeal that the issue is no longer *res integra*. On identical issue vide OIA No. AHM-EXCUS-002-APP-JC-11-19-20 dated 19.08.2019 the Joint Commissioner



(Appeals), Ahmedabad has allowed their appeal. Accordingly, the *appellant* has stated that the refund of Rs.5,59,997/- is admissible to them as CIF Value shown in Tax Invoice and CIF Value shown in Shipping Bill is same and this Transaction Value is to be taken for computing "Turnover of Zero Rated Supplies". Further, as regards to ITC of Rs.7808/- the *appellant* has stated that they have availed ITC for Invoices pertains to FY 2019-20 during April-2020 to June-2020 i.e. before due date of furnishing the Return for the month of September-2020. Such availment of ITC is permissible as per Section 16(4) of the CGST Act, 2017. In support of their defense the *appellant* has relied upon the judgement of Hon'ble High Court of Gujarat in case of M/s. Britannia Industries Limited Versus Union of India reported in 2020(42)G.S.T.L. 3(Guj.).

In view of above, the *appellant* has made following prayer to the Appellate Authority :

- (1) To set-aside the impugned order, with consequential relief;
- (2) To direct the learned Adjudicating Authority to grant full/entire refund amount alongwith mandatory interest

#### **Personal Hearing :**

4. Personal Hearing in the matter was through virtual mode held on 29.10.2021. Shri Shreeram Kaza, Vice President – Indirect Taxation appeared on behalf of the '*appellant*' as authorized representative. During P.H. he has reiterated the written submissions made by them till date in present matter and stated that their appeal may be decided on the basis of said written submissions.

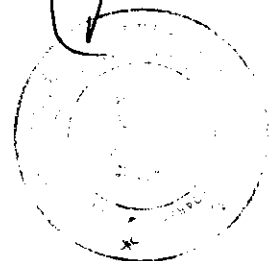
#### **Discussion and Findings :**

5(i). I have carefully gone through the facts of the case available on records as well as submissions made by the '*appellant*'. I find that the '*appellant*' had presented the refund claim on 06.11.2020 for amount of Rs.2,77,17,388/- of accumulated ITC on account of Export of Goods/Services without payment of Tax. A Show Cause Notice was issued to the *appellant* on 23.11.2020 for the discrepancies so noticed in respect of said refund claim. Thereafter, the *adjudicating authority* has rejected the refund claim of Rs.5,67,805/- vide *impugned order*. I find that while rejecting the said amount of refund claim the *adjudicating authority* has observed that *appellant* has considered CIF Value of Rs.381,17,77,697/- for calculating Zero Rated Supply Turn Over, whereas, on Icegate Portal the FOB Value of

corresponding Shipping Bills noticed Rs.373,47,43,384/-. Accordingly, the *adjudicating authority* has considered lower value i.e. Rs.373,47,43,384/- for calculating eligible amount of refund in terms of para 47 of CBIC's Circular No. 125/44/22019-GST dated 18.11.2019. Further, I find that the *adjudicating authority* has not considered the ITC of Rs.7808/- in Net ITC amount for calculating eligible amount of refund. In this regard the *adjudicating authority* has observed that the refund claim is pertains to April'20 to June'20 and the ITC of Rs.7808/- is of invoices of February'20 & March'20. So, in terms of "Net ITC" defines under Rule 89(4) of the CGST Rules, 2017 specifically "relevant period" define as per Clause (F), the *adjudicating authority* has not considered the ITC of Rs.7808/- for calculating Net ITC for ascertaining eligible amount of refund. Accordingly, the *adjudicating authority* has rejected the refund of Rs.5,67,805/- vide *impugned order*.

**5(ii).** I find that in their written submission the *appellant* has referred OIA No. AHM-EXCUS-002-APP-JC-11-19-20 dated 19.08.2019 and stated that the issue involved in the said OIA is identical to the issue involved in present appeal. I find that in the said OIA, the appellate authority had referred the CBIC's Circular No. 37/11/2018-GST dated 15.03.2018 and decided the matter. I find it pertinent to refer para 7.4 of said OIA, the same is reproduced as under :

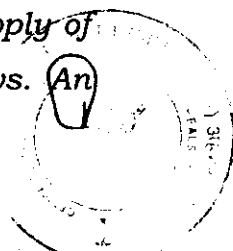
*7.4 Circular No. 37/11/2018-GST dated 15.3.2018 stipulates lower value in case discrepancy between value declared in Shipping Bill and in GST Invoices which is not the case here. Appellant submitted sample copies of Shipping Bills and relevant Invoices in support of their claim. After going through 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, 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 Value 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.*

I find that the issue involved in the present appeal is completely identical to the issue involved in said OIA, except issue of ITC of Rs.7808/-. I find that in the present matter the adjudicating authority has referred para 47 of the CBIC's Circular No. 125/44/22019-GST dated 18.11.2019 and rejected the refund claim of Rs.5,59,997/- (567805 - 7808). The relevant para 47 is produced as under :

47. It has also 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)

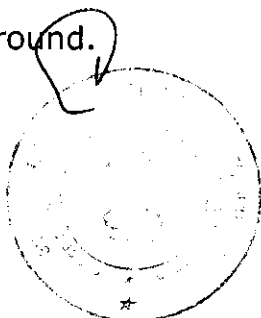


*exporter, at the time of supply of goods declares that the goods are meant for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill / bill of export. 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 taken into account while calculating the eligible amount of refund.*

In view of above para the value to be recorded in the GST invoice should normally be the Transaction Value and same should be recorded in corresponding Shipping Bill/Bill of Export. During processing of refund claim, the value recorded in Invoice and corresponding Shipping Bill/Bill of Export to be compared and if there is any difference than lower value should be taken into account while calculating the eligible amount of refund.

**5(iii).** In the present appeal the *appellant* has produced sample copies of Invoices and sample copies of relevant Shipping Bills. On going through the said sample copies I find that value declared in Invoices are matched with the Value recorded in relevant Shipping Bills as Full export value / Net Realizable. I find that in the identical matter of the *appellant* the appellate authority had allowed the appeal vide aforesaid OIA dated 19.08.2019 based upon CBIC's aforesaid Circular dated 15.03.2018. So far as present appeal is concerned I find that the CBIC vide Circular dated 18.11.2019 has also similarly clarified that in case of any difference between value recorded in Invoice and corresponding Shipping Bill/Bill of Export then the lower value is to be considered for calculating eligible amount of refund. However, on going through the sample copies of Invoices and corresponding Shipping Bills I have noticed that the value recorded in Shipping Bills as "Full export value / Amount in INR: Net Realisable" is matched with the value recorded in corresponding Tax Invoice.

In view of above stated OIA dated 19.08.2019 as well as based upon above findings, 'impugned order' is required to be set aside to the extent refund is rejected on this ground.



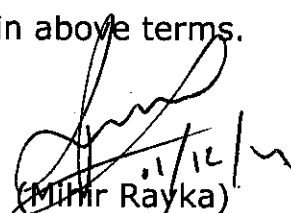


**5(iv).** Further, as regards to non consideration of ITC of Rs.7808/- for calculating eligible amount of refund, I find that it is correctly denied by the *adjudicating authority* as the refund pertains to April'20 to June'20 and the ITC is of invoice of period February'20 & March'20. As per clause (B) of Rule 89(4) of CGST Rules, 2017 "*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.* As per clause (F) "*Relevant period*" means *the period for which the claim has been filed.* Further, as regards to *appellant's* contention that they are eligible for refund in view of judgement of Hon'ble High Court of Gujarat in case of *M/s. Britannia Industries Limited Versus Union of India reported in 2020(42)G.S.T.L. 3(Guj.)* I find that the facts and circumstances of said case law is different from the facts and circumstances of present case. Accordingly, I find that the *adjudicating authority* has correctly denied the refund on this ground.

**6.** In view of above, the '*impugned order*' is set aside to the extent of rejection of refund of Rs.5,59,997/- and upheld to the extent of rejection of refund of Rs.7808/-.

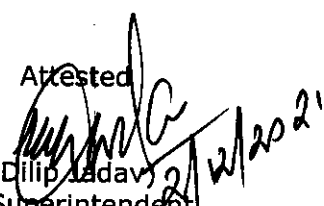
**7.** अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

**7.** The appeals filed by the appellants stand disposed of in above terms.

  
(Mihir Rayka)

Joint Commissioner (Appeals)

Date: 01.12.2021

Attested  
  
(Dilip Ladav)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad

By R.P.A.D.

To,  
M/s. Intas Pharmaceuticals Limited,  
5 to 12, Parmez, Sarkhej-Bavla Highway,  
Tal. Sanand, Matoda, Ahmedabad - 382213

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Commissioner, Central GST & C. Ex., Ahmedabad-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-IV, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File