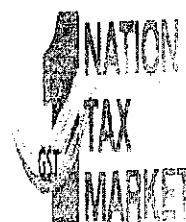




सत्यमेव जयते

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



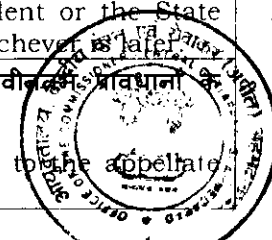
# **By Regd. Post**

DIN NO. : 20211264SW0000222F73

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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/570,572,573,574/2020-APPEAL
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-JC-77 to 80/2021-22 & 24.12.2021
(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	24.12.2021
(ङ)	Arising out of Order-in-Original No. (1) Z02408200181875 dated 13.08.2020, (2) Z02408200087408 dated 07.08.2020, (3) ZU2409200297276 dated 20.09.2020, (4) ZR2408200087053 dated 07.08.2020 issued by Assistant Commissioner, Division – VII (S G Highway East), Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Access Pharmaceuticals Pvt. Ltd. (GSTIN – 24AAGCA3985K1ZD) Address: - 3 Panchsheel Society, Ground Floor, Sunspot Row House, Usmanpura, Ahmedabad - 380013

(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 :**

The following appeals have been filed by **M/s. Access Pharmaceuticals Private Limited**, 3, Panchsheel Society, Ground Floor, Sun Spot Raw House, Usmanpura, Ahmedabad - 380013 (hereinafter referred as '*appellant*') against RFD-06 Orders (hereinafter referred as '*impugned orders*') passed by the Assistant Commissioner, CGST & C. Ex., Division - VII - S G Highway East, Ahmedabad North (hereinafter referred as '*adjudicating authority*').

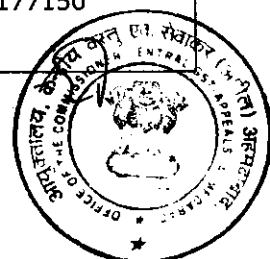
Sr. No.	Appeal No. & Date	RFD-06 Order No. & Date	Amount of Refund considered as Inadmissible (Central + State Tax)
1	GAPPL/ADC/GSTP/570/2020-APPEAL Dated 12.11.2020	ZO2408200181875 Dated 13.08.2020	73717
2	GAPPL/ADC/GSTP/572/2020-APPEAL Dated 12.11.2020	ZO2408200087408 Dated 07.08.2020	318526
3	GAPPL/ADC/GSTP/573/2020-APPEAL Dated 12.11.2020	ZU2409200297276 Dated 20.09.2020	544388
4	GAPPL/ADC/GSTP/574/2020-APPEAL Dated 12.11.2020	ZR2408200087053 Dated 07.08.2020	177150

**2(i).** The '*appellant*' is holding GSTIN No.24AAGCA3985K1ZD. As per the statement of facts mentioned in the appeal memo -

- the '*appellant*' is engaged in manufacture of Pharmaceutical Products,
- that almost all the inputs are taxable at 18% and the Pharmaceutical Products manufactured are taxable at 12%
- that resulted into accumulation of Input Tax Credit.

Accordingly, the '*appellant*' had filed following refund claims of accumulated Input Tax Credit on account of Inverted Duty Structure under Form RFD-01 :

Refund Application under form RFD-01			Refund Sanctioned (Central + State Tax)	Amount of Refund considered as Inadmissible (Central + State Tax)
ARN No.	Period	Refund claimed (Central + State Tax)		
AA240720029521P / 09.07.20	November'19	404872	331155	73717
AA240720029623J / 09.07.20	January'20	318526	0	318526
AA240720081175G / 23.07.20	February'20 to March'20	916104	371716	544388
AA240620042248K / 19.06.20	May'19 to June'19	750712	573562	177150



The refund claims were preferred in terms of Section 54(3)(ii) of the CGST Act, 2017 which read as : *“where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies)”* After examination of the said refund applications *“Notices for rejection of application for refund”* were issued to the ‘Appellant’. In the said Show Cause Notices it was mainly alleged that the Net ITC is inclusive of ITC of Input Services, which is inadmissible as per Rule 89 of the CGST Rules, 2017. Further, mismatch of Invoices were also alleged in the SCNs.

Thereafter, the ‘Adjudicating Authority’ has passed the *impugned orders* vide which partly allowed the refund applications and partly considered the refund as inadmissible as mentioned in above table.

**2.(ii)** In the grounds of appeal the ‘Appellant’ has submitted that the orders of the authority are bad in law and has been passed without evaluating documents, legal provisions and prevailing circulars. The reasons for rejection applications are vague and do not mention how the figures are derived.

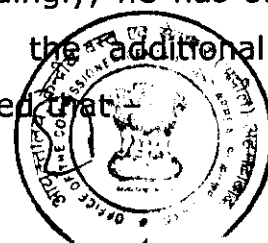
Further, as regards to issue of ITC of Input Services to be considered in Net ITC for calculating admissible amount of refund, the appellant has referred judgement of Hon’ble Gujarat High Court in Special Civil Application – No. 2792 of 2019. The appellant has stated in grounds of appeal that in view of said judgement, refund of accumulated ITC on account of inverted duty structure is not restricted to ITC of Input only it includes ITC of Input Services also.

The Appellant through these appeals made prayer that –

- *The order of the authority may be quashed or modified*
- *The ITC of input services may be granted in full in refund of inverted rated duty structure*
- *Any other relief as the appellate authority may think proper*

### **Personal Hearing :**

**3.** Personal Hearing in the matter was through virtual mode held on 13.12.2021. Shri Rushabh M. Prajapati, Advocate appeared on behalf of the ‘Appellant’. During P.H. he has stated that he would like to submit additional documents to defend the case. Accordingly, he has submitted the written submission dated 14.12.2021. In the additional written submission dated 14.12.21 the appellant has stated that



- The appellant had filed refund applications for Refund of Accumulated ITC on account of Inverted Tax Structure. In response to said refund applications the authority has issued SCNs (GST RFD-08) with no specific reason.
- On approaching, the authority has informed that the refund will be given except ITC of Input Services.
- requested to re-credit the rejected refund amount to electronic credit ledger of rearming four appeal and oblige.

### **Discussion and Findings :**

**4(i).** I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal Memorandum as well as additional submission dated 14.12.2021 of the 'Appellant'.

I find that the 'Appellant' had presented the refund applications of the ITC accumulated due to Inverted Duty Structure. The adjudicating authority has allowed the said refund of accumulated ITC except ITC of Input Services. The appellant has contended in the appeal memo about refund of accumulated ITC of Input Services in terms of Hon'ble Gujarat High Court's judgement. In this regard, I find that the said judgement was challenged before the Hon'ble Supreme Court by the Union of India. On 13.09.2021 the said judgement of Hon'ble High Court of Gujarat has been set aside by the Hon'ble Supreme Court by allowing the appeal of Union of India. The relevant para 113 under "H - Conclusion" of the Order of Hon'ble Supreme Court is reproduced as under :

*The Division Bench of the Gujarat High Court having examined the provisions of Section 54(3) and Rule 89(5) held that the latter was ultra vires. In its decision in **VKC Footsteps India Pvt. Ltd.** (supra), the Gujarat High Court held that by prescribing a formula in sub-Rule (5) of Rule 89 of the CGST Rules to execute refund of unutilized ITC accumulated on account of input services, the delegate of the legislature had acted contrary to the provisions of sub-Section (3) of Section 54 of the CGST Act which provides for a claim of refund of any unutilized ITC. The Gujarat High Court noted the definition of ITC in Section 2(62) and held that Rule 89(5) by restricting the refund only to input goods had acted ultra vires Section 54(3). The Division Bench of the Madras High Court on the other hand while delivering its judgment in **Tul. Transtonnelstory Afcons Joint Venture** (supra) declined to follow the view of the*



*Gujarat High Court noting that the proviso to Section 54(3) and, more significantly, its implications do not appear to have been taken into consideration in **VKC Footsteps India Pvt. Ltd.** (supra) except for a brief reference. Having considered this batch of appeals, and for the reasons which have been adduced in this judgment, we affirm the view of the Madras High Court and disapprove the view of the Gujarat High Court.*

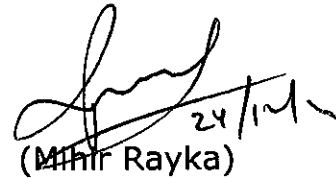
**4(ii).** In view of above, I find that the 'Adjudicating Authority' has rightly not considered the ITC of Input Service in calculating the Net ITC while sanctioning the refund claims of 'Appellant'. Accordingly, the 'Adjudicating Authority' has correctly sanctioned the amount of refund to the 'Appellant' without considering the ITC of Input Services.

Further, I find that the 'Appellant' vide additional submission dated 14.12.2021 has also requested for re-credit of the refund so rejected by the adjudicating authority in 4 appeals. Obviously, after the order of Hon'ble Supreme Court in the matter of *M/s. VKC Footsteps India Pvt. Ltd.*, there is no merit in the refund claims of ITC of Input Services in Inverted Duty Structure.

**5.** In view of above, I do not find any force in the contention of the 'Appellant' in respect of their refund claims. Accordingly, I do not find any reason to interfere with the decision taken by the 'adjudicating authority' vide 'impugned orders'. In view of above discussions, I reject the appeals filed by the 'Appellant'.

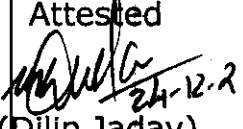
**6.** अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

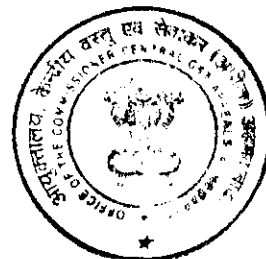
The appeals filed by the 'Appellant' stand disposed off in above terms.

  
(Mihir Rayka)

Joint Commissioner (Appeals)

Date: 24.12.2021

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



By R.P.A.D.

To,  
M/s. Access Pharmaceuticals Private Limited,  
3, Panchsheel Society, Ground Floor,  
Sun Spot Raw House, Usmanpura,  
Ahmedabad - 380013

Copy to:

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

