



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.
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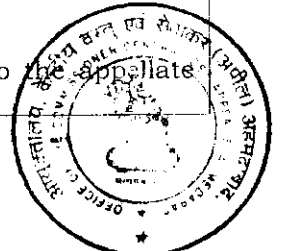


By Regd. Post

DIN NO. : 20211264SW00004984F4

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/571/2020-APPEAL/5304 To 5309
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-JC-81/2021-22 & 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. ZX2407200455907 dated 29.07.2020 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.	
	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying –	
(i)	(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 www.cbic.gov.in 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 www.cbic.gov.in .	



ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Access Pharmaceuticals Private Limited, 3, Panchsheel Society, Ground Floor, Sun Spot Raw House, Usmanpura, Ahmedabad - 380013 (hereinafter referred as '*appellant*') has filed the present appeal against Order No. ZX2407200455907 dated 29.07.2020 passed in the Form-GST-RFD-06 (hereinafter referred as '*impugned order*') rejecting refund claim of Rs. 2,31,309/-, issued by the Assistant Commissioner, CGST & C. Ex., Division - VII - S G Highway East, Ahmedabad North (hereinafter referred as '*adjudicating authority*').

2(i). The '*appellant*' is holding GSTIN No.24AAGCA3985K1ZD has filed the present appeal on 12.11.2020. 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 claim 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)		
AA240720005637I / 02.07.20	July'19 to September'19	231309	0	231309

The refund claim was 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 application, "*Notice for rejection of application for refund*" was issued to the '*Appellant*' in the Form-GST-RFD-08. In the said Show Cause Notice it was alleged that "*refund application is liable to be rejected on account of reasons "Other"*". Further, in the SCN a '*Remark*' was mentioned as - "*GSTR-2A PORTAL COPY NOT UPLOADED*". In response to said SCN the *appellant* had



submitted the copy of GST RFD-09 i.e. copy of reply submitted by them for said SCN.

Thereafter, the 'Adjudicating Authority' has passed the *impugned order* vide which considered the entire amount of Refund claim of Rs.2,31,309/- as inadmissible with remark as – RFD-06 ISSUED FOR REJECTION.

2(ii). In the grounds of appeal the 'Appellant' has submitted that the orders of the authority is bad in law and has been passed without evaluating documents, legal provisions and prevailing circulars. The reason for rejection refund application is vague. The appellant has specifically referred para 2.3 of the CBIC's Circular No. 59/33/2018-GST dated 04.09.2018. The same is reproduced as under :

2.3. *In view of the difficulties being faced by the claimants of refund, it has been decided that the refund claim shall be accompanied by a print-out of FORM GSTR-2A of the claimant for the relevant period for which the refund is claimed. The proper officer shall rely upon FORM GSTR-2A as an evidence of the accountal of the supply by the corresponding supplier in relation to which the input tax credit has been availed by the claimant. It may be noted that there may be situations in which FORM GSTR-2A may not contain the details of all the invoices relating to the input tax credit availed, possibly because the supplier's FORM GSTR-1 was delayed or not filed. In such situations, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund. 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 present in FORM GSTR-2A of the relevant period submitted by the claimant.*

By referring above, the appellant has stated that above Circular is absolutely clear on how to grant refund when 2A does not reflect all the bills of the suppliers. It is further stated in the grounds of appeal that the authority has erred in ignoring available data on the portal at the time of deciding refund application.

2(iii). Further, as regards to 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.

In view of above, the Appellant has made prayer that –

- *The order of the authority may be quashed or modified*
- *It may be held and clarified that latest data available data on the portal, such as form 2A, should be taken into account for the purpose of calculation ITC.*
- *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 application the authority has issued SCN (GST RFD-08) with no specific reason.*
- *On approaching, the authority has informed that the 2A copy is not uploaded.*
- *In connection refund claim for the month July to Sep-2019, the refund an amount of Rs.2,31,309/- is rejected with a reason of GSTR-2A not uploaded. However, the GSTR 2A was uploaded in the main refund application as well as in reply to SCN in GST RFD-09.*
- *The refund may be calculated a fresh for the quarter July to Sep -2019.*

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 application of the ITC accumulated due to Inverted Duty Structure. 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 **Tvl. 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.*

In view of above, I find that after the decision of Hon'ble Supreme Court, there is no merit in the refund claims of ITC of Input Services in Inverted Duty Structure.

4(ii). Since, the *appellant* has referred the CBIC's Circular No. 59/33/2018-GST dated 04.09.2018 in connection with refund rejected for copy of GSTR 2A not uploaded, it is pertinent to mention here that CBIC has issued a Circular No.125/44/2019-GST dated 18.11.2019. The para 2 of said Circular is reproduced as under :

*2. The necessary capabilities for making the refund procedure fully electronic, in which all steps of submission and processing shall be undertaken electronically, have been deployed on the common portal with effect from **26-9-2019**, Accordingly,*



*Circulars issued earlier laying down the guidelines for manual submission and processing of refund claims need to be suitably modified and a fresh set of guidelines needs to be issued for electronic submission and processing of refund claims. **With this objective and in order to ensure uniformity in the implementation of the provisions of law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby lays down the procedure for electronic submission and processing of refund applications in supersession of earlier Circulars.***

On going through above Circular I find that in the matter of "Refund of unutilized ITC on account of accumulation due to inverted tax structure" applicants shall have to upload a copy of Form GSTR-2A for the relevant period for which refund is claimed.

4(iii). Since, the refund claim is rejected on the sole ground of GSTR-2A Portal copy not uploaded; it is pertinent to mention here that the *appellant* has produced the copy of Application for Refund - Form-GST-RFD-01 with ARN No. AA2407200056371 before this Appellate Authority. On going through the said copy I find that it is mentioned under the heading Supporting Documents :

- Annexure B (July 19 to Sep 19).pdf
- GSTR 2A (July 19 to Sep 19).pdf

Further, the *appellant* has also produced the copy of reply i.e. GST-RFD-08, submitted in response to Show Cause Notice dated 06.07.2020. On going through the same I find that the *appellant* has replied as under :

- *As required we are enclosing here with GSTR 2A portal copy for the month of July 2019, Aug 2019 and Sep 2019.*
- Supporting Documents :
 - o GSTR 2A b2b - GSTR 2A july 2019 B2B.pdf
 - o GSTR 2A JulyB2BA - GSTR 2A July 2019 B2BA.pdf
 - o GSTR 2A Aug19B2b - GSTR 2A Aug 19 B2B.pdf
 - o GSTR2ASep19B2B - GSTR 2A Sep 2019 B2B.pdf
 - o GSTR2ASep19B2BA - GSTR 2A Sep 2019 B2BA.pdf

In view of above, I find that the *appellant* has given compliance to the ground mentioned in the SCN. In this case the *claim*



was rejected only on the ground that copy of GSTR 2A not uploaded. Therefore, it transpires that there is no dispute with regard to refund of accumulated ITC on account of inverted duty structure which otherwise allowable to *appellant*.

I find that there is no dispute about Inverted Duty Structure i.e. Input being at higher rate than the rate of tax on output supplies, the *appellant* is eligible to claim refund of accumulated ITC as per Section 54(3)(ii) of the CGST Act, 2017. The same is reproduced as under :


"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)"

Since, the refund of accumulated ITC on account of Inverted Duty Structure otherwise admissible to the *Appellant*, I am of the view that the refund claim rejected on the sole ground of copy of GSTR 2A not uploaded is not proper. Further, the *appellant* is also contending that they have uploaded the GSTR 2A in the main refund application as well as in reply to SCN in GST RFD-09 also. Further, the *appellant* has produced the copy of GSTR 2A before this appellate authority also. Therefore, the refund claim so rejected by the adjudicating authority on the sole ground of 'copy of GSTR 2A not uploaded' is not proper.

5. In view of above discussions, I reject the ground of the *impugned order* based on which refund claim is so rejected. Accordingly, I hereby set aside the *impugned order* and allow the appeal filed by the *appellant* without going into merit of all other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

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


6. The appeal 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.
- ✓ 6. Guard File.
7. P.A. File

