आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी, अहमदाबाद३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015.

07926305065- टेलेफैक्स07926305136

DIN NO. : 20220364SW000011641D

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/524/2021-APPEAL/6873-78

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-CGST-002-APP-ADC-98/2021-22**
दिनाँक Date : **16-03-2022** जारी करने की तारीख Date of Issue : 17-03-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZR2401210003580** dated **31.12.2020** issued by Deputy Commissioner, Central Goods and Services Tax, Division-IV, Ahmedabad North

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

M/s. Otsuka Pharmaceuticals India Private Limited

199,200,201,206 to 210,Vasna Chachawadi, Ta. Sanand

Ahmedabad, Gujarat – 382213

(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 वेबसाइटwww.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 websitewww.cbic.gov.in.

ORDER-IN-APPEAL

Brief facts of the case :

M/s. Otsuka Pharmaceuticals India Private Limited, Plot No. 199, 200, 201, 206 to 210, Vasna Chacharwadi, Ta. Sanand, Ahmedabad - 382213, Gujarat, (*hereinafter referred as 'appellant'*) has filed the present appeal on 09.03.2021 against the Order dated 31.12.2020 passed in the Form-GST-RFD-06 (*hereinafter referred as 'impugned order'*) rejecting refund of Rs.83,46,256/-, 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 having GSTIN 24AAFCC0602G1ZD. The appellant has filed the present appeal on 09.03.2021 wherein submitted the statement of facts as under :

- *The appellant is dealing into various pharmaceutical products. Appellant sells their product in India as well as Overseas markets. The appellant has filed refund claim of accumulated Input Tax Credit on account of export of goods without payment of tax for the period from January 2019 to March 2019. The refund claim filed under ARN No. AA2411200124435 dated 05.11.2020.*
- *A show cause notice was issued to the appellant asking as to why refund should not be rejected on the following grounds :*
    - *Shipping Bill details in respect of Invoice No. 2501005203, 2501005204, 2501005236 & 2501005237 not shown in GSTN Portal.*
    - *On verifying the details on Icegate Portal it was noticed that Zero Rated Supply Turnover is considered more Rs.77,19,732/- for the purpose of calculation of refund claim.*
    - *ITC amounting to Rs.3,98,59,084/- pertains to invoices of December'2017, January'2018 and from April'2018 to December'2018 considered for calculation of refund. The refund claim is of period from January'2019 to March'2019 so, above invoices of 2017 & 2018 found inadmissible for the purpose of refund claim.*
    - *As per "Annexure B" ITC amounting to Rs.3,90,876/- not reflecting in GSTR 2A of the respective months.*

- *ITC amounting to Rs.45,66,469/- towards imports of services under RCM, copy of invoices not found uploaded along with refund claim.*
- *Considering above grounds, proportionate refund claim of Rs.84,18,427/- proposed for rejection in the SCN.*

- *In this regard, the appellant has stated in the statement of facts that they have filed the reply to the SCN in the Form RFD 09 dated 05.12.2020 on various grounds explaining the reasons as to why appellant is lawfully entitled for refund.*
- *Appellant has attended the PH on 28.12.2020 wherein reiterated the submissions made in reply to SCN and also placed reliance on para 36 read with Para 61 of CBIC Circular No. 125/44/2019-GST dated 18.11.2019. However, without appreciating the facts of matter and conveniently ignoring the binding Circular of CBIC, the Ld. Deputy Commissioner has passed the order rejecting proportionate refund of Rs.83,46,256/-.*

2(ii). Being aggrieved with the impugned order the appellant has preferred the present appeal on the following grounds of appeal :

- *Refund of ITC once availed appropriately and reconciled with GSTR 2A cannot be denied on flimsy ground.*
- *Section 54(3) of the CGST Act, 2017 allows 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. Referred Rule 89(4) of the CGST Rules, 2017 and reproduced the clause 'B' & 'F' with reference to "Net ITC" & 'Relevant Period" respectively as under :*
  - ***(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;*
  - ***(F) Relevant Period means the period for which the claim has been filed.***
- *On conjoint reading of Clause B (Net ITC) & Clause F (Relevant Period) of Rule 89(4) of the CGST Rules, 2017 and Para 61 of the CBIC's Circular No. 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 ITC has been availed in GSTR 3B filed for the relevant period of refund claim, which includes ITC of invoices issued in earlier months. Rule 89 of the CGST Rules 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 for the purpose of refund claim.

- *The Ld. Deputy Commissioner has grossly mistaken in interpreting the above referred clauses of Rule 89(4) of the CGST Rules, 2017. Once the ITC has been appropriately availed in the returns filed, rejection of the same for the purpose of granting refund is unjustified.*
- *Reliance placed on judgement of Hon'ble CESTAT Bangalore in case of M/s. Wipro Technologies Vs. Commissioner of Service Tax [TS-986-CESTAT-2020-ST], wherein 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 filed. According to appellant, this judgement is fully applicable in the circumstances of the present case.*
- *Appellant has referred the CBIC Circular No. 125/44/2019-GST dated 18.11.2019 particularly para 36 and 61 and submitted that scenario in present case is squarely clarified in both the said paras. The CBIC by this Circular clarifies that refund of unutilized ITC of prior period invoices cannot be denied instead the same can be rightly considered for claiming refund.*
- *Circular issued by Board are binding orders for the department officers and cannot be ignored by the officer while passing the order. It is a settled prudence that the instructions, orders and circulars issued by the Board are binding on department officers acting to discharge their duty and officers are not empowered to act against the instructions of the Board.*

2(iii). As regards to mismatch of value the appellant has submitted that there is no mismatch in the values declared in the shipping bills filed by them and denial of refund on such ground is unjustified and bad in law. In this regard, the appellant has further submitted in the grounds of appeal that -

- *They have exported goods on C&F, CFR, CIF and CIP basis. In all such cases relevant disclosure in respect of freight or insurance charges, as the case may be, collected is separately shown in the shipping bill in accordance with the Customs Regulations.*
- *The Ld. Adjudicating officer has only reconciled the CIF Value declared in GST returns with FOB value column of shipping bill and completely ignored the disclosures made for freight and insurance. The appellant is filing Shipping Bills through Customs EDI System where relevant details like FOB value, Freight, Insurance, GST Value etc. are to be mentioned in the*

specified placeholders only. The appellant has fully complied with the provisions of Customs Regulations and this fat is not in dispute.

- *Appellant has referred the Section 15 of the CGST Act, 2017 and submitted that taxable value for the purpose of GST should include all charges collected as a part of sales consideration. It is amply clear that in case of sales made on C&F, CFR, CIF and CIP basis, the additional amount so collected shall form part of the taxable value for the purpose of GST law. When the value of export is determined as per the aforesaid section, the same should be considered for the purpose of sanctioning refund claim and a separate yard stick cannot be used for the purpose of sanctioning the refund claim on export. It is important to highlight that the officer has not disputed the valuation of export made by the appellant and merely disallowed the refund due to value mismatch.*

2(iv). As regards to technical fault in the GSTN System the appellant has submitted that –

- *Refund should not be denied due to technical fault. Through SCN the appellant was asked to produce invoices for import of service where tax is paid under reverse charge mechanism. However, due to technical glitches on the GSTN portal, the same could not be uploaded in the online response filed by the appellant. They have also raised a grievance on the GSTN portal vide acknowledgement no. 202012052734539 dated 05.12.2020. Copy of said grievance and email is produced by the appellant.*
- *The appellant has further stated that they have tried to furnish the physical copies of invoices with the adjudicating authority, however, the same were not accepted by the authorities.*
- *At the outset, the appellant should not be deprived of their fundamental right to represent their matter and submit documentary evidence due to technical glitches in the departmental website. Further, non acceptance of invoices through email and personally clearly shows that the Ld. Adjudicating officer has not decided the case by following the principal of natural justice and decided the matter without application of mind. Hence such order passed is bad in law and needs to be set aside.*
- *Further, appellant would like to submit that the copy of invoices required in cases where ITC is claimed on the basis of tax invoices issued by the vendors. However, in case of reverse charge, the credit is claimed basis the tax payment made by the appellant. The department has acknowledged that the due payment against reverese charge is made on time and this fact is not disputed. Hence, merely disallowance of refund claim due to non-submission of import invoice is highly regrettable.*

2(v). Considering the above facts and submissions, the appellant has prayed that the Ld. Appellate Authority may be pleased to –

- *Allow appeal of the appellant to the extent it is judicial to the interest of the Appellant;*
- *Set aside the impugned order dated 31.12.2020 and allow the appeal with consequential relief;*
- *Grant the refund amounting to Rs.83,46,256/- in cash;*
- *Grant an opportunity of being heard; and*
- *Pass such other order in the interest of justice, equity and right conscience.*

Personal Hearing :

3. Personal Hearing in the matter was through virtual mode held on 13.01.2022. Mr. Mitesh Jain and Mr. Nirmit Shah, Chartered Accountants appeared on behalf of the *'Appellant'* as authorized representatives. During P.H. they have stated that they want to submit some additional information/details. Seven working days time was given to them for the same.

Accordingly, the *'Appellant'* has submitted the additional submission dated 18.01.2022, received on 19.01.2022. Through additional submission the *'Appellant'* has submitted that

- *as per Para 47 of CBIC Circular No. 125/44/2019 the value of goods declared in GST invoice and value of its corresponding shipping bill/bill of export should be examined and lower of the two values should be taken into account for processing the refund claim.*
- *In the Circular nowhere prescribes that FOB values are to be considered for the purpose of refund. The para 47 nowhere provides that the values as per ICEGATE portal must be considered for refund purpose.*
- *Though the CIF values are available/mentioned on the shipping bills reconciles with the values reported in GST invoices, the said CIF values not visible on the ICEGATE portal and instead only FOB values are visible.*
- *Hence the substantial benefit in law must not be denied to the appellant due to technical issue on the ICEGATE portal, where the correct values are reported in the shipping bills filed.*

The appellant has further submitted through additional submission dated 18.01.2022 that the Ld. Adjudicating Authority has rejected refund proportionate to ITC of Rs.45,66,469/- with the reason that the appellant has not uploaded the copy of invoices, as required vide Circular No. 139/09/2020 dated 10.06.2020, related to import of services on which

GST has been paid under RCM. In this regard, the appellant has submitted that –

- *At the time of uploading the reply to the SCN issued by the Ld. Adjudicating Authority, the appellant due to technical glitch on GSTN portal, was unable to upload the copy of invoices related to import of services.*
- *The appellant has raised a grievance on the GSTN portal vide ticket no. G-202012052734539 and further emailed the copy of invoices on the registered email id of the adjudicating authority.*
- *The appellant has also tried to furnish the physical copies of invoices with the adjudicating authority. However, the same were not accepted and not considered by the authority while passing the refund order.*

Discussion and Findings :

4. 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 18.01.2022.

At the outset, I find that in the *impugned order* refund claim of Rs.83,46,256/- was denied on the premise that –

(a) There is mismatch between the values declared by the *'Appellant'* and details of Shipping Bills available at ICEGATE Portal. Accordingly, considered lower of the two values in the light of CBIC's Circular 125/44/2019-GST dated 18.11.2019 and rejected the proportionate amount of refund.

(b) ITC of Rs.3,49,01,739/- pertains to invoices of December'17, January'18 and April'18 to December'18 considered for calculating the eligible amount of refund. Since the refund claim pertains to January'19 to March'19 the adjudicating authority has denied the refund proportionate to ITC of Rs.3,49,01,739/- in the light of "Net ITC" and "Relevant Period" as defined in Rule 89(4) of the CGST Rules, 2017.

(c) ITC of Rs.45,66,469/- pertains to import of services under RCM, considered for calculation of eligible amount of refund. As the appellant failed to upload such invoices along with refund application, the adjudicating authority has held the said ITC as inadmissible for the purpose of refund claim in view of CBIC's Circular No. 139/09/2020-GST dated 10.06.2020.

5. I find that the refund claim of Rs.2,18,21,982/- was filed on 05.12.2020 by the appellant of accumulated ITC on account of Export of Goods/Services without payment of Tax. The refund claim was pertains to period January'2019 to March'2019. After examining the said refund claim a Show Cause Notice was issued to the *appellant* on 20.11.2020 proposing rejection of certain amount of refund claim due to certain deficiency noticed in the refund claim. Thereafter, out of the aforesaid total amount of refund claim, the *adjudicating authority* has sanctioned the refund of Rs.1,34,75,726/- and rejected refund claim of Rs.83,46,256/- vide *impugned order.*

6(i). As regards to rejection of refund claim on account of mismatch of zero-rated supply turnover, I find that in this regard the *adjudicating authority* has relied upon the CBIC's Circular No. 125/44/2019-GST dated 18.11.2019. The relevant para of said Circular is reproduced 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.*

6(ii). 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.

6(iii). In this regard, I find that the *appellant* has mainly contended that – (i) as per Circular the value of goods declared in GST invoice and value of its corresponding shipping bill/bill of export should be examined and lower of the two values should be taken into account, (ii) However, in Circular nowhere prescribes that FOB values are to be considered for the purpose of refund, (iii) nowhere provides that the values as per ICEGATE portal must be considered for refund purposes, (iv) the CIF values are available/mentioned on the shipping bills reconciles with the values reported in GST invoices, (v) the CIF values not visible on the ICEGATE portal and instead only FOB values are visible, hence the substantial benefit in law must not be denied due to technical issue on the ICEGATE portal.

6(iv). Further, I find that the *appellant* has submitted in grounds of appeal that they have exported goods on C&F, CFR, CIF and CIP basis and in all such cases freight or Insurance charges as the case may be collected and separately shown in Shipping Bills. In support of same produced copies of Shipping Bills. However, I do not find any such documents produced by the *appellant* which evidencing that value recorded in GST Invoice and corresponding Shipping Bill/Bill of Export are same and there is no difference in the value. Further, I find that the *adjudicating authority*, during the processing of the refund claim, examined the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export as available on ICEGATE portal and the lower of the two values taken into account for calculating the eligible amount of refund in terms of CBIC's Circular No. 125/44/2019-GST dated 18.11.2019.

6(v). In view of above, I find that the *adjudicating authority* has correctly rejected the refund claim on account of mismatch of zero-rated supply turnover in the light of Circular No. 125/44/2019-GST dated 18.11.2019.

7(i). As regards to rejection of refund proportionate to ITC of Rs.3,49,01,739/- for the reason that said ITC availed based on invoices of past period, the *appellant* in this regard has contended that – (i) Refund of ITC once availed appropriately and reconciled with GSTR 2A cannot be denied on flimsy ground, (ii) Section 54(3) of the CGST Act, 2017 allows 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, (iii) On conjoint reading of Clause 'B' (Net ITC) & Clause 'F' (Relevant Period) of Rule 89(4) of the CGST Rules, 2017 and Para 61 of the CBIC's Circular No. 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, (iv) Rule 89 of the CGST Rules 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.

7(ii). Further, I find that the *appellant* has also referred the case of M/s. Wipro Technologies Vs. Commissioner of Service Tax [TS-986-CESTAT-2020-ST] and contended that if the availment of credit in the first instant is not in dispute then it is not open for the Department to deny the same when a refund is filed. *Appellant* has further contended that they have rightly availed the Input Tax Credit on the basis of past period Invoices during the period of refund claim and same is considered as Net ITC for calculation of eligible amount of refund. Once ITC has been availed appropriately and same is not in dispute then rejection of the same for the purpose of granting refund is unjustified.

7(iii). In this regard, I refer to CBIC's Circular No. 125/44/2019 – GST dated 18.11.2019 wherein it was clarified that –

> *61. Presently, ITC is reflected in the electronic credit ledger on the basis of the amount of the ITC availed on self-declaration basis in FORM GSTR-3B for a particular tax period. It may happen that the goods purchased against a particular tax invoice issued in a particular month, say August 2018, may be declared in the FORM GSTR-3B filed for a subsequent month, say September 2018. This is inevitable in cases where the supplier raises an invoice, say in August, 2018, and the goods reach the recipient's premises in September, 2018. Since GST law mandates that ITC can be availed only after the goods have been received, the recipient can only avail the ITC on such goods in the FORM GSTR-3B filed for the month of September, 2018. However, it has been reported that tax authorities are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September, 2018. In this regard, it is clarified that "Net ITC" as defined in rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been "availed" when it is*

entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in FORM GSTR-3B. Further, section 16(4) of the CGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2019, "availed" in September, 2019 cannot be excluded from the calculation of the refund amount for the month of September, 2019.

7(iv). The above clarification mandate the view that ITC availed during claim period on the strength of invoices issued during past period cannot be excluded for calculation of refund amount for the claim period and should also be considered for determining refund amount. In the subject case, there is no dispute regarding admissibility of ITC availed during the claim period or ITC availed in question are not reflected in the GSTR 2A of the *appellant* and only dispute is that the credit taken during claim period include invoices issued during the past period i.e. 2017 & 2018. In this regard I find that as per meaning assigned to Net ITC and relevant date and also on the basis of clarification issued by CBIC vide Circular mentioned above there is no restriction under GST Law for availing ITC in a month on the strength of invoices issued during past period subject to time line prescribed in Section 16(4) of the CGST Act, 2017.

7(v). In view of foregoing, I do not find any justification in excluding ITC of past period Invoices on the reasoning given in the *impugned order* and therefore, hold that ITC of Invoices of past period should be taken into account subject to time limit prescribed in Section 16(4) of the CGST Act, 2017 for arriving Net ITC and determining consequent refund.

8(i). As regards to rejection of refund proportionate to ITC of Rs.45,66,469/- on account of not uploaded the copy of relevant invoices, I find that in this regard the *adjudicating authority* has relied upon the CBIC's Circular No. 139/09/2020 dated 10.06.2020. In this regard, the *appellant* has mainly contended that – (i) at the time of uploading the reply to the SCN issued by the Ld. *Adjudicating Authority*, the *appellant* due to technical glitch on GSTN portal, was unable to upload the copy of invoices related to import of services, (ii) *appellant* has raised a grievance on the GSTN portal vide ticket no. G- 202012052734539 and further emailed the copy of invoices on the registered email id of the *adjudicating authority*. (iii)

adjudicating authority has not accepted the physical copies of invoices when *appellant* has tried to furnish the same.

8(ii). Further; the *appellant* has submitted that said ITC is pertaining to the tax paid by the *appellant* on Reverse Charge Mechanism (RCM) basis on the import of services. Therefore, contended that in the matter of ITC claimed on the basis of tax invoices issued by vendors requirement of invoices is justified but in the instant case the ITC is pertains to tax paid by *appellant* under RCM basis only. Further, the *appellant* has contended that they should not be deprived of their fundamental right to represent their matter and submit documentary evidences due to technical glitches in the departmental website.

8(iii). On going through the documents submitted by the *appellant* I find that the *appellant* has raised the grievance on the GSTN portal that they unable to upload refund supporting documents. Further, the *appellant* has produced the copy of email dated 28.12.2020, on going through the same I find that the *appellant* has stated in the said mail that *"as discussed in the personal hearing on 28.12.2020, please find attached herewith ... copies of invoices relating to import of services"*.

8(iv). Considering the above facts, 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 invoices not uploaded. Therefore, it transpires that there is no dispute with regard to refund of accumulated ITC on account of inverted duty structure in respect of ITC pertains to import of services (tax paid by *appellant* on RCM basis).

Since, the refund of accumulated ITC on account of Inverted Duty Structure i/r. ITC of import of services otherwise admissible to the *Appellant*, I am of the view that the refund claim rejected on the sole ground of copy of invoices not uploaded is not proper. Further, the *appellant* is also contending that they have tried to upload the invoices on GSTN Portal but due to technical glitch failed to upload the same. Further, the *appellant* is contending that in such situation they have furnished the invoices on divisional mail and also tried to furnish the invoices physically with the *adjudicating authority* but same was not accepted by the *adjudicating authority*.

8(v). In view of foregoing, I find that the refund claim rejected by the *adjudicating authority* on the ground of *'copy of invoices not uploaded'* is not proper and looking to the technical glitch in uploading of invoices I am

of the view that in such situation substantial benefit of refund claim cannot be denied.

9. In view of above, I find that the *adjudicating authority* has correctly denied the refund claim on the ground of mismatch of zero-rated supply turnover, however looking to the foregoing discussions and findings I find that the *'impugned order'* is required to be set aside to the extent of refund rejected on the ground of ITC availed on past period invoices as well as refund rejected on the ground of invoices of import services not uploaded.

9. In view of above, the *'impugned order'* is set aside only to the extent of rejection of refund on the count of ITC of past period invoices and ITC of invoices of import services not uploaded. Accordingly, allowed the appeal to that extent only.

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

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

16/03/2022

(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 16.03.2022

Attested

17/3/2022

(Dilip Jadav)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. Otsuka Pharmaceuticals India Private Limited,
Plot No. 199, 200, 201, 206 to 210, Vasna Chacharwadi,
Ta. Sanand, Ahmedabad – 382213.

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-IV, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File