



आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी 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. : 20221164SW0000414464

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/576/2022 -APPEAL / 1183-88
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-100/2022-23 and 16.11.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	16.11.2022
(ङ)	Arising out of Order-In-Original No. ZW2412210361525 dated 31.12.2021 passed by The Assistant Commissioner, CGST, Division - V (Dholka), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Cadila Pharmaceuticals Ltd. (GSTIN-24AAACC6251E1Z5) 'Cadila Corporate Campus', Sarkhej-Dholka Road, Village-Bhat, Tal-Dholka, Ahmedabad, Gujarat-382210

(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 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 Cadila Pharmaceutical Ltd., Plot No.1389, Trasad Road, Dholka, Ahmedabad, Gujarat, 382225 (hereinafter referred as 'Appellant') has filed the present appeal against the Order No. ZW2412210361525, dated 31.12.2021 (hereinafter referred as 'impugned order') rejecting refund claim amounting to Rs.4,32,827/-, passed by the Assistant Commissioner, CGST, Division-V [Dholka], Ahmedabad-North (hereinafter referred as 'adjudicating authority').

2(i). Briefly stated the facts of the case are that the 'Appellant' is holding GST No. 24AAACC6251E1Z5 has filed the present appeal on 14.02.2022. The 'Appellant' is engaged in the business of manufacturing of pharmaceuticals products. They import the goods on Cost, Insurance & Freight [CIF] basis.

During GST audit conducted for the period 01.07.2017 to 31.03.2019, it was observed that they had not paid the IGST on ocean freight on CIF value of import on RCM basis on ocean freights in terms of Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017. In compliance to the audit objection the appellant had paid the Tax alongwith interest and penalty.

Later the appellant came to know that Hon'ble High Court of Gujarat in the case of *M/s. Mohit Menerals Pvt. Ltd. Vs Union of India & ors. (In Special Civil Application No.726 of 2018)* vide its Order dated 23rd January'2020, struck down the Notification No. 10/2017-Integrated Tax (Rate) , dated 28.06.2017 holding the said Notification as ultra-vires the Integrated Goods and Services Tax Act, 2017.

2(ii). The 'Appellant' relying upon the above judgment had filed a refund application in Form GST RFD-01 claiming refund of the IGST paid on ocean freight under reverse charge basis along with interest & penalty which was paid on audit objection. In response to said refund application, Show Cause Notice No. ZZ2412210161003, dated 14.12.2021 was issued to the appellant proposing rejection of refund claim. Rejection was proposed on the grounds that the Mohit Minerals case is pending before the Hon'ble Supreme Court vide SLP No.013958/ 2020, therefore the refund sanctioning authority cannot sanction refund for the same. In response to the notice, the appellant replied that the subject

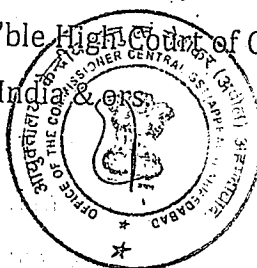


F.No. : GAPPL/ADC/GSTP/576/2022-Appeal

matter was settled by the Hon'ble High Court of Gujarat in case of Mohit Minerals Ltd. Vs UOI. SLP filed by the department before the Apex court is pending and no stay granted by the Apex Court hence they are eligible for the subject refund and therefore they requested to pass the refund claim as law settled by the Gujarat High Court. Thereafter, the refund claim was rejected by the *adjudicating authority vide impugned order*.

2(iii). Being aggrieved with the "*impugned order*" the 'Appellant' has filed the present appeal on 14.02.2022, wherein they stated mainly on the following points that -

- Entry No.10 of Notification No. 10/2017-Integrated Tax (Rate), provides that if supplier and recipient of the ocean freight service are in non-taxable territory i.e. outside India, then tax has to be paid by the importer as defined under the Customs Act, under reverse charge. Further, Entry No.9 of the Rate Notification No. 08/2017- I Tax rate provides that importer is liable to 5% IGST on 10% of CIF value. Thus, the ocean freight should be taken as 10% of CIF Value of the imported goods.
- Section 12 of the IGST Act determines place of supply where location of supplier and recipient are in India whereas Section 13 deals with cases where location of either of them is in India. In present facts of the case, location of foreign exporter and shipping line, both are outside India and hence, transaction does not get covered under Section 12 or Section 13.
- Fact of the above, Hon'ble High Court of Gujarat observed that place of supply couldn't be determined. The provisions in the CGST Act (which also applies to IGST Act) relating to time of supply, value of supply and filing of returns are applicable to supplier and recipient of supply. High Court concluded that since importer is not considered as "recipient", these provisions also could not be applied.
- IGST is paid at the time of import on value of imported goods including ocean freight charges. Thus, levy of IGST on ocean freight service under reverse charge as supply of service leads to double taxation.
- The appellant had filed the refund application online on IGST payment made of ocean freight alongwith interest and penalty, which was not required to be paid as the matter settled by the Hon'ble High Court of Gujarat in the case of M/s. Mohit Minerals Pvt. Ltd. Vs Union of India & ors.



F.No. : GAPPL/ADC/GSTP/576/2022-Appeal

- Bar of unjust enrichment is not applicable in the present case as incidence of IGST has not been passed to another person and tax was borne by them.
- Mere filing of appeal before higher appellate authority is not sufficient; it must be stayed by the higher forum, if the department contemplates appeal against the order of High Court, which is in favor of appellant, refund along with interest still payable unless such order is stayed by the higher forum.

In view the above submissions the appellant submitted that the impugned order dated 31.12.2021 be set aside with consequential relief.

3. Personal Hearing in the matter was held on 20.10.2022. Shri S. J. Vyas, on behalf of the 'Appellant' as authorized representative has attended the hearing in person. During the hearing he has produced the Judgment of the Supreme Court in case of M/s. Mohit Minerals Pvt. Ltd. He also reiterated the submissions made till date and nothing more to add.

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 Appeals Memorandum. I find that the 'Appellant' had paid IGST on Ocean Freight under reverse charge basis in terms of Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017 on being objected by the Audit officer during GST Audit.

However, Hon'ble Gujarat High Court in the case of M/s. Mohit Minerals Pvt. Ltd.[2020 (33) G.S.T.L. 321 (Guj.)] has held that - "*The impugned Notification No. 8/2017-Integrated Tax (Rate), dated 28th June, 2017 and the Entry 10 of the Notification No. 10/2017-Integrated Tax (Rate), dated 28th June, 2017 are declared as ultra vires the Integrated Goods and Services Tax Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional*".

I further find that consequent to decision of Hon'ble Gujarat High Court, the appellant had filed the refund application in Form-GST-RFD-01, claiming refund of the IGST paid on ocean freight for the period from July,2017 to March,2019 alongwith interest and penalty which was paid on objection during GST audit. I find that in response to said refund application, Show Cause Notice was issued to the appellant proposing

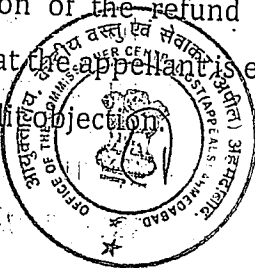


F.No. : GAPPL/ADC/GSTP/576/2022-Appeal

rejection of refund for the reason that the case of M/s Mohit Mineral was pending before the Hon'ble Supreme Court vide SLP No.013958/ 2020. Thereafter, the refund claim was rejected by the adjudicating authority vide impugned order in form GST-RFD-06 without assigning any reason.

4(ii). I find that the appellant in the present appeal contended that the Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017 is ultra-vires the parent act (being the IGST Act) and hence, no IGST can be recovered from the appellant for transportation services provided in case of CIF contracts; Hon'ble High Court of Gujarat in the case of *M/s. Mohit Minerals Pvt. Ltd. Vs Union of India & ors. (In Special Civil Application No. 726 of 2018)* has very clearly elucidated, through a detailed judgment, that Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017 is ultra-vires the parent Act i.e. the IGST Act, in so far as the payment of IGST by the importer of goods on transportation services provided by a non-taxable person under CIF contract is concerned ; Hon'ble High Court of Gujarat has concluded that no IGST is payable by the recipient of the services (who is the importer of Goods and the appellant in the present case) thus the refund claim of the appellant rejected by the Ld. Refund Processing Officer without appreciating the observations and rulings of the Hon'ble High Court of Gujarat.

4(iii). I find that in the matter of M/s. Mohit Minerals Pvt. Ltd., the Hon'ble Supreme Court vide order dated 19.05.2022 [2022 (61) G.S.T.L. 257 (S.C.)] has dismissed the appeal filed by the Union of India and upheld the decision of Hon'ble Gujarat High Court, wherein levy of IGST on Ocean Freight is considered as unconstitutional. Accordingly, I find that in the present case the appellant has also paid the IGST on ocean freight which is held by the Hon'ble Courts as tax collected by Revenue without authority of law. I further find that in the matter of *M/s. Gokul Agro Resources Ltd. (SCA No.1758 of 2020)* and *M/s. Bharat Oman Refineries Ltd. (SCA No. 8881 of 2020)*, Hon'ble Gujarat High Court has allowed the refund of GST paid on ocean freight. Therefore, in the light of aforesaid judgments and by following the Rule of Precedent and also the judicial discipline, I find that the grounds for issuance of notice and rejection of the refund claim filed by the appellant are not sustainable. Therefore, I find that the appellant is eligible for refund of IGST so paid along with interest and penalty on audit objection.

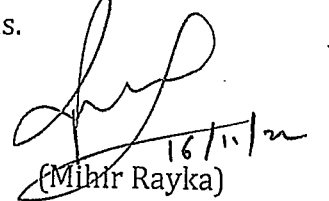


F.No. : GAPPL/ADC/GSTP/576/2022-Appeal

5. In view of the above discussions, the impugned order passed by the adjudicating authority is set aside for being not legal and proper. The adjudicating authority/refund processing officer to verify other relevant aspects including that the credit of IGST paid on ocean freight availed or/ and utilized by the appellant, if any, has to be reversed/ paid under the provisions of the CGST Act. Accordingly, I allow the appeal of the "Appellant".

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


The appeal filed by the *appellant* stands disposed of in above terms.

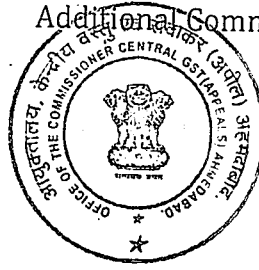

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 16.11.2022

Attested


(Ajay Kumar Agarwal)
Superintendent (Appeals)
Central Tax,
Ahmedabad.



By R.P.A.D.

To,
M/s Cadila Pharmaceutical Ltd.,
Plot No.1389, Trasad Road,
Dholka, Ahmedabad,
Gujarat, 382225.

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 Additional Commissioner, Central Tax (System), Ahmedabad-North.
5. The Assistant Commissioner, CGST, Division-V [Dholka], Ahmedabad-North.
- ✓ 6. Guard File.
7. P.A. File.

