



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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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2084/2021-APPEAL /1077 70'1082
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-022/2022-23 and 30.05.2022
(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	30.05.2022
(ङ)	Arising out of Order-In-Original issued in FORM-GST-RFD-06 having ARN No. AA240621047616C dated 29.07.2021 issued by The Deputy Commissioner, CGST & CE, Division-IV (Changodar), Ahmedabad North Commissionerate	
(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 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 .



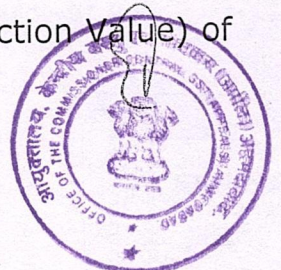
ORDER-IN-APPEAL**Brief facts of the case :**

M/s. 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 29.07.2021 passed in the Form-GST-RFD-06 (*hereinafter referred as 'impugned order'*) rejecting refund of Rs.6,20,736/-, issued by the Assistant 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 24AAACI5120L3ZS. On 15.06.2021 vide ARN No. AA240621047616C, the '*Appellant*' had filed a Refund claim of Rs.2,97,91,481/- for the period January-2021 to March-2021 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 22.06.2021 for following discrepancies :

- I. *Mismatch in Zero Rated Supply Turnover. In RFD-01/Statement 3A it is mentioned Rs. 595,81,16,230/- whereas on verification the details with Shipping Bills, the FOB value of the corresponding invoices/shipping bills comes to Rs. 583,49,70,664/-. It appears that Rs.12,31,45,566/- 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 amounting to Rs. 5,703/- on the invoices of input supplier M/s. Ankur Clearing Agency Pvt. Ltd. mentioned at Sl. No. 9 to 34 considered for calculation of refund being claimed were not found in GST 2A submitted along with application. Hence, ITC amounting to Rs.5,703/- found inadmissible for the purpose of refund being claimed. Therefore, why the proportionate refund claim amounting to Rs.6,21,331/- should not be disallowed.*

2(ii). In response to above SCN the '*Appellant*' had submitted reply under FORM GST-RFD-09 on 01.07.2021. As regards to point No. I above, the '*Appellant*' have stated 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 '*Appellant*' has referred para 9 of CBIC's Circular No. 37/11/2018-GST dated 15.03.2018 and stated that Goods was exported on CIF basis and therefore, transaction value in Invoice and CIF value in Shipping Bill would be same and this transaction value is correctly taken for the purpose of computing "Turnover of Zero Rated Supplies".

2(iii). Further as regards to point No. II above, the '*Appellant*' has stated that they have availed ITC of Rs.5,703/- in respect of invoices of M/s. Ankur Clearing Agency Pvt. Ltd. who is CHA, who further avails services from other service providers and bill is issued by other service providers upon Intas and Intas makes payments to respective vendors through M/s. Ankur Clearing Agency Pvt. Ltd. But inadvertently, they have captured name of Ankur Clearing Agency Pvt. Ltd. instead of other service providers in Annexure-B given at the time of application. Further, provided the Annexure 2 with correct details of other service providers instead of Ankur Clearing Agency Pvt. Ltd. Further, ITC of Rs.4564/- out of Rs.5703/- is matched with GSTR 2A. There is mismatch of Rs.1139/-, is not reflected in GSTR 2A.

Considering the above reply, the *adjudicating authority* has rejected the refund claim of Rs.6,20,736/-.

3(i). Against the said rejection of refund claim of Rs. 6,20,736/- the '*Appellant*' has preferred present appeal on 22.09.2021. In the appeal memo the '*Appellant*' has stated that refund of Rs. 6,20,736/- rejected on the ground that it is not as per para 47 of the Circular No. 125/44/2019-GST dated 18.11.2019 as well as '*Appellant*' is not eligible for ITC claimed during tax period on account of invoices are not reflected in GSTR-2A amount of Rs.5,096/-. The '*Appellant*' has further submitted that refund claim was rejected under sub-section (9) of the Section 54 of the CGST Act, 2017 read with sub-rule (3) of Rule 92 of the CGST Rules, 2017 on the ground that '*Appellant*' had mentioned excess value of zero rated supply in their RFD-01. The findings of the *Adjudicating Authority* are that the total value shown by '*Appellant*' of zero rated supply is not matching with total FOB Value of the Shipping Bills for which Refund has been claimed.

3(ii). The *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. 125/44/2019-GST dated 18.11.2019 and 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.6,20,736/- 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".

3(v). Further, as regards to ITC of Rs.5,096/- the *appellant* has stated that they have availed ITC during January'21, to March'21 on invoices which are not reflected in GSTR-2A. In this regard, Appellant has submitted that ITC of Rs.5096/- is pertaining to multiple tax invoices issued by various



suppliers (supplying import / export related ancillary services). However, for refund claim, in advertently they have mentioned name of supplier for these invoices as M/s. Ankur Clearing Agency Pvt. Ltd. The revised list of Tax Invoices for ITC of Rs.5096/- with correct details has been submitted with the appeal. The '*Appellant*' has further submitted that out of ITC of Rs.5096/-, the Tax invoices for ITC of Rs.4226/- are reflected in GSTR-2A. Regarding, remaining refund of ITC of Rs.869/- the appellant submit that tax invoices of this ITC were issued during period September'20 to March'21 and as per Section Section 16(4) of the CGST Act, 2017 they are entitled to avail ITC of this period before due date of furnishing return u/s 39 of the CGST Act, 2017, for the month of September'2021. The '*Appellant*' has further referred the Section 37(3) of the CGST Act, 2017. The '*Appellant*' has also referred the judgement of Hon'ble Gujarat High Court in case of 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 17.05.2022. 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 also stated that they want to submit additional submission within 3 days, which has been granted.

Accordingly, the '*Appellant*' has submitted their additional submission on 18.05.2022. In the additional submission the '*Appellant*' has submitted 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. The total Value (Transaction Value) of zero rated supply in Tax Invoice shown by '*Appellant*' is to be matched with total CIF Value of the Shipping Bills and not with the FOB value of Shipping Bills. The '*Appellant*' has again referred Section 15 of the CGST Act, 2017, para 9 of CBIC's Circular No. 37/11/2018-GST dated 15.03.2018 as well as



125/44/2019-GST dated 18.11.2019. The 'Appellant' has further submitted that on identical issue Hon'ble Joint Commissioner (Appeals), CGST Ahmedabad allowed their appeal vide OIA No. AHM-EXCUS-002-APP-JC-11-19-20 dated 19.08.2019 and OIA No. AHM-CGST-002-APP-JC-67/2021-22 dated 01.12.2021. As regards, to ITC of Rs.5096/- 'Appellant' has submitted that invoices pertains to ITC of Rs.4226/- are reflected in GSTR-2A. Further, as regards to ITC of Rs.869/- the 'Appellant' has again submitted that tax invoices issued during Sep.-20 to Mar.-21 and accordingly suppliers still having time to rectify GSTR1A for the said period till submission of GSTR-3B for September-21.

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 15.06.2021 for amount of Rs.2,97,91,481/- of accumulated ITC on account of Export of Goods/Services without payment of Tax. A Show Cause Notice was issued to the *appellant* on 22.06.2021 for the discrepancies so noticed in respect of said refund claim. Thereafter, the *adjudicating authority* has rejected the refund claim of Rs.6,20,736/- 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.595,81,16,230/- for calculating Zero Rated Supply Turn Over, whereas, on verification the FOB Value of corresponding Shipping Bills noticed Rs.583,49,70,664/-. Accordingly, the *adjudicating authority* has considered lower value i.e. Rs. 583,49,70,664/- 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.5,096/- in Net ITC amount for calculating eligible amount of refund. In this regard the *adjudicating authority* has observed that invoices of service providers for ITC of Rs.607/- were found in GSTR-2A of relevant tax period, hence ITC of Rs.607/- found admissible out of ITC of Rs.5703/- and ITC of Rs.5096/- being not found in GSTR-2A not considered. The *adjudicating authority* has accordingly not considered the ITC of Rs.5096/- for calculating Net ITC for ascertaining eligible amount of refund. Accordingly, the *adjudicating authority* has rejected the refund of Rs.6,20,736/- 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

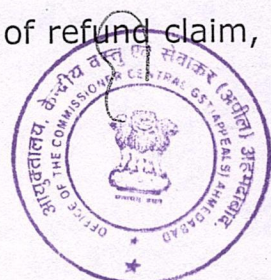


export invoice which is reflected in GSTR-1 and reconciled Value with GSTR 3B and, that which is reflected in the respective Shipping Bill. The logic behind adjusting any FOB value or any arbitrary value is not clear and is done without any authority of the law. Thus without any express provisions to 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.5096/-. Further, 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. 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,



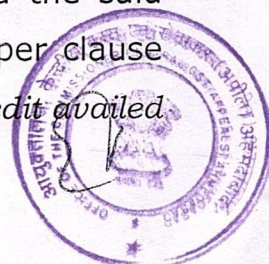
the value recorded in Invoice and corresponding Shipping Bill/Bill of Export to be compared and if there is any difference than lower value should be taken into account while calculating the eligible amount of refund.

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 Realizable*" 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 of refund is rejected on this ground.

5(iv). Further, as regards to non consideration of ITC of Rs.5096/- for calculating eligible amount of refund, I find that it is correctly denied by the *adjudicating authority* as the invoices of respective service providers were not found in GSTR-2A of the relevant tax period. In this regard, I find that vide SCN, ITC of Rs.5703/- were denied on the ground that invoices of supplier M/s. Ankur Clearing Agency Pvt. Ltd. were not found in GSTR-2A. Thereafter, considering the reply of '*Appellant*', the *adjudicating authority* has allowed the ITC of Rs.607/- out of said ITC of Rs.5703/- and rejected ITC of Rs.5096/- on the ground mentioned as above.

In the present appeal the '*Appellant*' has again produced the copy of GSTR-2A and list of invoices pertains to Rs.5096/- with copy of invoices. However, on going through the copy of GSTR-2A and list of Invoices of Rs.5096/- I find that in only three invoices are pertains to refund claim period i.e. January'21 to March'21, however, I do not find the said invoices of respective service providers in GSTR-2A. Further, as per clause (B) of Rule 89(4) of CGST Rules, 2017 "*Net ITC*" means input tax credit *availed*

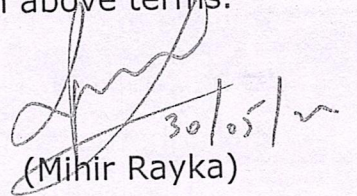


on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both. As per clause (F) "Relevant period" means the period for which the claim has been filed. Further, as regards to *appellant's* contention that 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 on the ground of 'mismatch in zero rated supply turnover' and upheld to the extent of rejection of refund in respect of ITC of Rs.5,096/-.

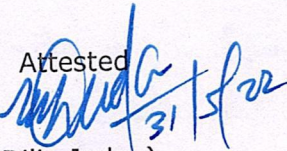
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the 'Appellant' stand disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 30.05.2022

Attested

(Dilip Jadav)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,
M/s. Intas Pharmaceuticals Limited,
5 to 12, Pharmez, 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