



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/554-557,560-569/2022
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-068-081/2022-23 and 27.09.2022
(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	27.09.2022
(ङ)	Arising out of Order-In-Original No. ZZ2410210313567 dated 30.11.2021 issued by The Assistant Commissioner, CGST, Division – VI (S G Highway West), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Baxter Pharmaceuticals India Pvt. Ltd. (GSTIN-24AACCC6252B1Z8) Vasna-Chacharwadi, 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 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 .



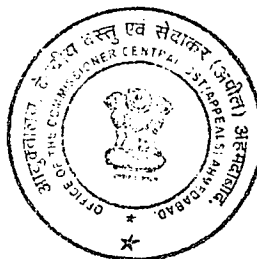
ORDER-IN-APPEAL

Brief Facts of the Case :

M/s Baxter Pharmaceuticals India Pvt. Ltd., Vasana-Chacharwadi, Sanand, Ahmedabad, Gujarat 382213 (hereinafter referred as '*Appellant*') has filed the present appeals against the Orders tabulated below (hereinafter referred as '*impugned orders*') rejecting refund claim of the amount as shown against the Orders, passed by the Deputy Commissioner, CGST & C. Ex., Division- VI [S.G.Highway-West], Ahmedabad North (hereinafter referred as '*adjudicating authority*').

S.No.	Appeal No.	Order No. and Date	Refund involved.
1.	GAPPL/ADC/GSTP/554/2022	ZZ2410210313567, dated 30.11.2021	3,16,877
2.	GAPPL/ADC/GSTP/555/2022	ZS2410210313612, dated 27.10.2021	47,97,165
3.	GAPPL/ADC/GSTP/556/2022	ZR2410210312423, dated 27.10.2021	49,77,085
4.	GAPPL/ADC/GSTP/557/2022	ZP2410210313434, dated 27.10.2021	12,43,030
5.	GAPPL/ADC/GSTP/560/2022	ZW2410210313723, dated 26.10.2021	1,46,056
6.	GAPPL/ADC/GSTP/561/2022	ZU2410210312623, dated 27.10.2021	1,10,725
7.	GAPPL/ADC/GSTP/562/2022	ZR2410210312378, dated 27.10.2021	99,425
8.	GAPPL/ADC/GSTP/563/2022	ZU2410210312267, dated 26.10.2021	1,39,947
9.	GAPPL/ADC/GSTP/564/2022	ZW2410210313678, dated 27.10.2021	1,99,564
10.	GAPPL/ADC/GSTP/565/2022	ZU2410210312490, dated 26.10.2021	1,07,226
11.	GAPPL/ADC/GSTP/566/2022	ZO2410210312201, dated 26.10.2021	1,76,917
12.	GAPPL/ADC/GSTP/567/2022	ZW2410210312312, dated 27.10.2021	1,69,141
13.	GAPPL/ADC/GSTP/568/2022	ZN2410210313778, dated 26.10.2021	73,323
14.	GAPPL/ADC/GSTP/569/2022	ZS2410210312567, dated 27.10.2021	1,93,552

2(i). Briefly stated the facts of the case are that the '*Appellant*' is holding GST No. 24AACCC6252B1Z8 has filed the present appeals on 01.02.2022. The '*Appellant*' is a healthcare company involved in providing various services and products through collaboration with patients, healthcare professions, the Government & healthcare organizations nationally. They imports goods on Cost, Insurance & Freight [CIF] basis from outside India. The appellant started paying IGST on RCM basis on ocean freights in terms of Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017.



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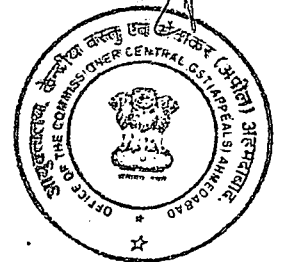
However, on 23rd January 2020, Hon'ble High Court of Gujarat in the case of *M/s. Mohit Menerals Pvt. Ltd. Vs Union of India & ors. (In Special Civil Application No.726 of 2018)* struck down the Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017 holding the said Notification as ultra-vires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

2(ii). The 'Appellant' relying upon the above judgments had filed following refund applications in Form GST RFD-01 on various dates claiming refund of the IGST paid on ocean freight under reverse charge basis. In response to said refund applications, Show Cause Notices were issued to the appellant proposing rejection of refund claim on the ground that the importer is located in the taxable territory on India and is liable to pay IGST under RCM in case of services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the Customs station of clearance in India. Thereafter, the refund claim was rejected by the *adjudicating authority vide impugned orders as tabulated above* on the ground that:-

- The revenue department has already filed SLP No.13958/ 2020 against final order dated 23.01.2020 in SCA No.726/2018 passed by the Hon'ble Gujarat High Court in case of M/s Mohit Minerals Pvt. Ltd. and the same is pending. Hence the matter has not reached finality and is sub-judice.
- As the relief has been granted to M/s Mohit Minerals Pvt. Ltd. hence the relief can not be granted to the appellant.
- The transportation of goods in a vessel from a non-taxable territory to Taxable territory amounts to import of service and such ocean freight is leviable to IGST as an inter-state supply of service and the appellant being the importer, is liable to pay IGST under RCM prescribed by Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017 by following valuation as per Notification No.8/2017-Integrated Tax (Rate), dated 28.06.2017 irrespective of valuation adopted for the import of goods i.e. FOB or CIF.

2(iii). Being aggrieved with the "impugned order" the 'Appellant' has filed the present appeal on 01.02.2022 wherein they stated mainly on the following points that -

- 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

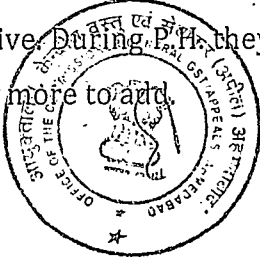


be recovered from the appellant for transportation services provided in case of CIF contracts.

- It is noteworthy 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)* 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 pointedly derived various reasoning for concluding 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 , it is submitted that 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 is flawed and is in thorough contempt of the High Court.
- Decision of Hon'ble High Court of Gujarat is to be followed by the lower authorities and submitted that no IGST is leviable on the ocean freight services provided by foreign transportation agencies for the supply of goods in a vessel to the appellant in India and thus, the refund claim of the appellant should be sanctioned.
- The Refund Processing Authority has completely overlooked well established legal principles governing the judiciary and quasi-judicial authorities , specifically the maxim of "*stare decisis*" also known as "Rule of Precedent ". They relied upon various decisions on this principle.

In view the above submissions the appellant submitted that no adverse order be passed until such time that the Supreme Court decides upon the matter of appeal filed by the revenue in the matter of M/s Mohit Minerals.

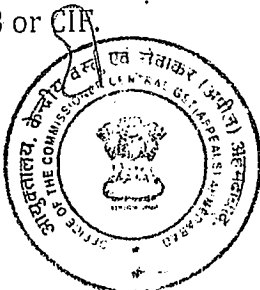
3. Personal Hearing in the matter was held on 18.08.2022, through virtual mode, wherein Shri Amit Ahir, Associate Manager of Appellant company & Shri Sumit Jain, CA appeared on behalf of the 'Appellant' as authorized representative. During P.H. they have reiterated the submissions made till date and nothing more to add.



Discussion and Findings :

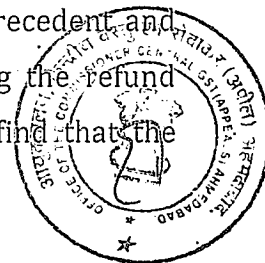
4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. I find that the 'Appellant' had paid IGST on Ocean Freight under reverse charge basis in terms of Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017. 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 applications in Form-GST-RFD-01, claiming refund of the IGST paid on ocean freight under reverse charge basis for the period from December, 2018 to January, 2020. I find that in response to said refund applications, Show Cause Notices were issued to the appellant proposing rejection of refund for the reasons that the importer is located in the taxable territory on India and is liable to pay IGST under RCM in case of services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the Customs station of clearance in India. Thereafter, the refund claims were rejected by the adjudicating authority vide impugned orders on the ground that the revenue department has already filed SLP No.13958/2020 against final order dated 23.01.2020 in SCA No.726/2018 passed by the Hon'ble Gujarat High Court in case of M/s Mohit Minerals Pvt. Ltd. and the same is pending. Hence the matter has not reached finality and is sub-judice; as the relief has been granted to M/s Mohit Minerals Pvt. Ltd. hence the relief can not be granted to the appellant; the transportation of goods in a vessel from a non-taxable territory to Taxable territory amounts to import of service and such ocean freight is leviable to IGST as an inter-state supply of service and the appellant being the importer, is liable to pay IGST under RCM prescribed by Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017 by following valuation as per Notification No.8/2017-Integrated Tax (Rate), dated 28.06.2017 irrespective of valuation adopted for the import of goods i.e. FOB or CIF.



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 is flawed and is in thorough contempt of the High Court ; Decision of Hon'ble High Court of Gujarat is to be followed by the lower authorities and submitted that no IGST is leviable on the ocean freight services provided by foreign transportation agencies for the supply of goods in a vessel to the appellant in India and thus, the refund claim of the appellant should be sanctioned ; the Refund Processing Authority has completely overlooked well established legal principles governing the judiciary and quasi-judicial authorities, specifically the maxim of "*stare decisis*" also known as "Rule of Precedent ".

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 rejecting the refund claims filed by the appellant are not sustainable. Therefore, I find that the



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appellant is eligible for refund of IGST so paid on ocean freight in terms of Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017.

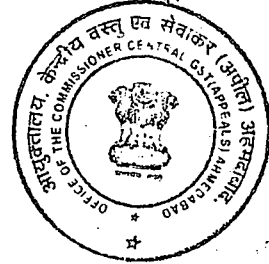
5. In view of the above discussions, the impugned orders passed by the adjudicating authority are set aside for being not legal and proper. The adjudicating authority / refund processing officer to verify that credit of IGST paid on ocean freight availed or/ and utilized by the appellant, if any, has 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: 27.09.2022



Attested

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

By R.P.A.D.

To,
M/s Baxter Pharmaceuticals India Pvt. Ltd.,
Vasana-Chacharwadi,
Sanand, Ahmedabad,
Gujarat - 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 Additional Commissioner, Central Tax (System), Ahmedabad North.
5. The Deputy /Assistant Commissioner, CGST & C. Ex, Division- VI [S.G.Highway-West], Ahmedabad North.
6. Guard File.
7. P.A. File.

