



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय

Office of the Commissioner (Appeals)

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015

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आज़ादी का
अमृत महोत्सव

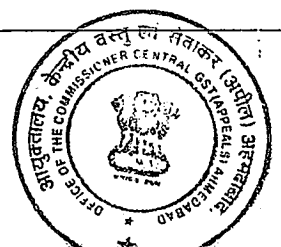
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DIN NO. : 20221064SW0000999C17

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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/1434 TO 1443/2022-APPEAL																								
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-086 TO 095/2022-23, dated 21.10.2022																								
(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	25.10.2022																								
(ङ)	Arising out of the following Orders-In-Original issued by The Assistant Commissioner, CGST, Division-VI [S.G.Highway-West], Ahmedabad-North Commissionerate.																									
	<table><tr><td>Sr.</td><td>Order No. and date</td><td>Sr.</td><td>Order No. and date</td></tr><tr><td>1.</td><td>ZO2409200234732, dated 16.09.2020</td><td>6.</td><td>ZN2402210086947, dated 07.02.2021</td></tr><tr><td>2.</td><td>ZP2406200278139, dated 22.06.2020</td><td>7.</td><td>ZN2402210086969, dated 07.02.2021</td></tr><tr><td>3.</td><td>ZV2405200022483, dated 04.05.2020</td><td>8.</td><td>ZN2404200374160, dated 20.04.2020</td></tr><tr><td>4.</td><td>ZN2409200234754, dated 16.09.2020</td><td>9.</td><td>ZR2402210086958, dated 07.02.2021</td></tr><tr><td>5.</td><td>ZN2409200234776, dated 16.09.2020</td><td>10.</td><td>ZR2402210086936, dated 07.02.2021</td></tr></table>		Sr.	Order No. and date	Sr.	Order No. and date	1.	ZO2409200234732, dated 16.09.2020	6.	ZN2402210086947, dated 07.02.2021	2.	ZP2406200278139, dated 22.06.2020	7.	ZN2402210086969, dated 07.02.2021	3.	ZV2405200022483, dated 04.05.2020	8.	ZN2404200374160, dated 20.04.2020	4.	ZN2409200234754, dated 16.09.2020	9.	ZR2402210086958, dated 07.02.2021	5.	ZN2409200234776, dated 16.09.2020	10.	ZR2402210086936, dated 07.02.2021
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(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Intas Pharmaceuticals Ltd., (GSTIN-24AAACI5120L1ZU) Sub Plot No.A, Final Plot No.255, TPS No. 38, Nr. Thaltej Cross Road, S.G.Highway, Ahmedabad- 380054, Gujarat..																								

(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 .



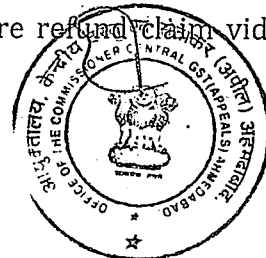
ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s Intas Pharmaceuticals Ltd., Sub Plot No.A, Final Plot No.255, TPS No. 38, Nr. Thaltej Cross Road, S.G.Highway, Ahmedabad-380054, (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').

Sr. No.	Appeal No. / date	Order No. and date	Refund period.	Refund involved.
1.	GAPPL/ADC/GSTP/1434/2022, dated 30.05.2022.	ZO2409200234732, dated 16.09.2020	05/2020	60,054/-
2.	GAPPL/ADC/GSTP/1435/2022, dated 30.05.2022.	ZP2406200278139, dated 22.06.2020	04/2020	4,45,938/-
3.	GAPPL/ADC/GSTP/1436/2022, dated 30.05.2022.	ZV2405200022483, dated 04.05.2020	03/2020	3,35,942/-
4.	GAPPL/ADC/GSTP/1437/2022, dated 30.05.2022.	ZN2409200234754, dated 16.09.2020	06/2020	1,60,948/-
5.	GAPPL/ADC/GSTP/1438/2022, dated 30.05.2022.	ZN2409200234776, dated 16.09.2020	07/2020	96,282/-
6.	GAPPL/ADC/GSTP/1439/2022, dated 30.05.2022.	ZN2402210086947, dated 07.02.2021	10/2020	1,54,920/-
7.	GAPPL/ADC/GSTP/1440/2022, dated 30.05.2022.	ZN2402210086969, dated 07.02.2021	11/2020	1,18,498/-
8.	GAPPL/ADC/GSTP/1441/2022, dated 30.05.2022.	ZN2404200374160, dated 20.04.2020	02/2020	4,31,086/-
9.	GAPPL/ADC/GSTP/1442/2022, dated 30.05.2022.	ZR2402210086958, dated 07.02.2021	09/2020	1,63,220/-
10.	GAPPL/ADC/GSTP/1443/2022, dated 30.05.2022.	ZR2402210086936, dated 07.02.2021	08/2020	2,32,184/-

2(i). Briefly stated the facts of the case are that the 'Appellant' is holding GST Registration - GSTIN No. 24AAACI5120L1ZU and has filed the above appeals on 30.05.2022. The 'Appellant' had filed refund applications for refund claims tabulated above for the period February, 2020 to November, 2020 on account of "Refund of CGST & SGST paid for the above tax period pursuant to the notice pay recovered from the employees". In response to said refund claims show cause notices were issued to the 'Appellant'. In the said each SCN Form-GST-RFD-08, it was mentioned that refund application is liable to be rejected for the reasons - "Other".

2(ii). Further, the 'Appellant' was asked to furnish reply to the SCN within stipulated period and personal hearings were also offered to the 'Appellant' on various dates. Thereafter, the adjudicating authority has rejected the entire refund claim vide

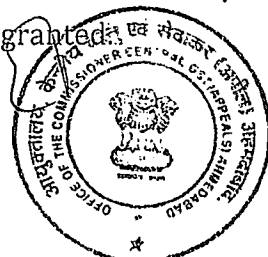


impugned orders in Form GST-RFD-06 without specifying any reason of rejection of the claims. A Remark is also mentioned in the impugned orders as – “RFD06 is being issued.”

2(iii). Being aggrieved with the impugned orders the appellant has filed the present appeals on 30.05.2022 mainly on the following grounds –

- The Order in Form GST RFD-06 is not a speaking order as it does not specify any reason for rejection of the refund claim. Also it is vague and ambiguous as it mentioned the amount of refund rejected as “INR 0”.
- Refunds on the same issue have been regularly granted from July, 2017 to January, 2020.
- Enhanced functionality to grant re-credit in Electronic Ledger, though Form GST PMT-03 ; has been made available on GSTN Portal in view of new Rule 86(4A) of CGST Rules, 2017.
- Judicial discipline should be observed in obeying and following higher Appellate Authority's Order. They contended that the principle of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the Appellate Authority is not acceptable to the department and is the subject matter of an appeal, can furnish no ground for not following it unless its operation has been suspended by a competent court. They referred that in the similar matter Commissioner [Appeals], Ahmedabad vide OIA No.AHM-EXCUS-002-APP-396-17-18, dated 22.03.2017 had allowed the appeal filed by them against rejection of refund claim of Service Tax paid on notice pay recovered from the employee. They mentioned that department filed appeal against the OIA before the Hon'ble CESTAT, Ahmedabad and Hon'ble CESTAT vide Order No. A/12265/2021, dated 25.06.2021 / upheld the OIA of the Commissioner [Appeals]. Department's Tax Appeal against the CESTAT order is pending for judgment. However, no stay is there on operation of Order of CESTAT.
- Appeal is filed within time limit as per Apex Court's Order dated 10.01.2022 in *Suo Moto WP (C) No. 3 of 2020*.
- The refund rejection orders are require to be set aside with consequential relief.

3. Personal Hearing in the matter was through virtual mode held on 13.10.2022 , wherein Shri Willingtdon Christian, Advocate appeared on behalf of the 'Appellant' as authorized representative. During Persona Hearing he has reiterated the submissions made till date and informed that they want to give additional submission, which was approved and 3 working days period was granted.



Accordingly, the appellant has submitted the additional written submission dated 13.10.2022 wherein stated that – *in GST regime also, the appellants have paid GST on such Notice Pay Recovery from their employees and have been regularly granted refund of the same by the Adjudicating authority and reiterated their contentions.*

Discussion and Findings:

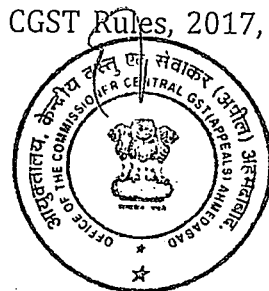
4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum as well as additional written submission. I find that the 'Appellant' had preferred the refund applications on account of "*Refund of CGST & SGST paid for the above tax period pursuant to the notice pay recovered from the employee*" for the various amount for the period Feb, 2020 to Nov, 2020. In response to said refund applications Show Cause Notice was issued to them proposing rejection of refund claims for reasons mentioned as "*Other*". In this regard I find that the appellant has submitted the replies to SCNs under Form GST-RFD-09. However, all the refund claims were rejected vide impugned orders. I find that no specific reason is mentioned in the impugned orders for rejection of refund applications. Accordingly, appellant has preferred the present appeals.

4(ii). I find that in the present appeals the appellant in the ground of appeals has at the outset contended that the Orders in Form GST RFD-06 are not a speaking order as they do not specify any reason for rejection of the refund claim. Also they are vague and ambiguous as it mentioned the amount of refund rejected as "*INR 0*". I find that the principle of natural justice has not been followed by the adjudicating authority in the present matter.

4(iii). Further, as the appellant has referred and relied upon the judgment of Apex Court's Order dated 10.01.2022 in *Suo Moto WP (C) No. 3 of 2020* in support for limitation of filing appeals.

As per Hon'ble Supreme Court's Order dated 10-1-2022 in suo motu writ petition (C) No.3 of 2020 in MA No.665/2021, excluding the period from 15-3-2020 till 28-2-2022 in computing time limitation and providing 90 days extension from 1-3-2022 in filing appeals, I hold that all the present appeal are not hit by time limitation as all the appeals have been filed on 30-05-2022.

4(iv). Further, as regards to appellant's submission that the impugned orders *Form GST RFD-06 are not speaking orders as they do not specify any reason for rejection of the refund claim. Also it is vague*, I referred the Rule 92(3) of the CGST Rules, 2017, same is reproduced as under:



(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

In view of above legal provisions, - "reasons to be recorded in writing" & "no application for refund shall be rejected without giving the applicant an opportunity of being heard". In the present matter, on going through copy of show cause notices and impugned orders, I find that no specific reason for rejection of refund claims have been recorded. I also find that opportunities of Personal Hearings were provided to the 'Appellant' on various dates. However, no such evidence available on records that Personal Hearings were conducted. Therefore, I find that the *adjudicating authority* has violated the principle of natural justice in passing the *impugned order* vide which rejected the refund claims without communicating the valid or legitimate reasons before passing said orders. Further, I am of the view that proper speaking order should have been passed by giving proper opportunity of personal hearing in the matters to the 'Appellant' and detailing factors leading to rejection of refund claims should have been discussed. Else such order would not be sustainable in the eyes of law.

5. I further find that the appellant in replies to all the SCNs in Forms GST-RFD-09 replied that - *as they have paid the liability through Electronic Credit Ledger, they are agree to get refund by way of re-credit in electronic Credit ledger by way of order in Form GST PMT 03 as per Circular No. 135/05/2020-GST dated 31.03.2020 readwith Rule 86(4A).* It is absolutely confusing that in absence of mention of reason of rejection of refund claim in SCN how the appellant replied for agreeing to get refund by way of re-credit in electronic Credit ledger by way of order in Form GST PMT 03. The adjudicating authority has failed to give any findings on rejection of refund claim and also on the above respond of the appellant.

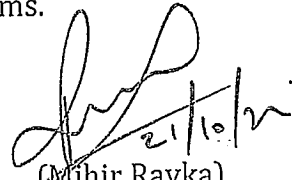
6. Considering the above facts, the *adjudicating authority* is hereby directed to process the refund applications of the *appellant* by following the principle of natural justice. The 'Appellant' is also directed to submit all relevant documents/submission before the *adjudicating authority*.



7. In view of above discussions, the *impugned orders* passed by the *adjudicating authority* are set aside for being not legal and proper and accordingly, I allow the appeals of 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.

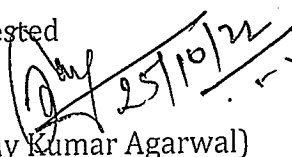
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

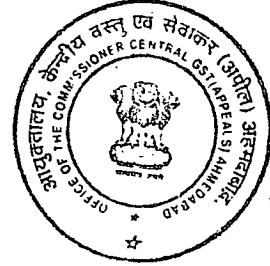
The appeals filed by the *appellant* stands disposed of in above terms.


(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 21.10.2022

Attested


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



By R.P.A.D.

To,
M/s Intas Pharmaceuticals Ltd.,
Sub Plot No.A, Final Plot No.255, TPS No. 38,
Nr. Thaltej Cross Road,
S.G.Highway, Ahmedabad- 380054.

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