



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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DIN NO. : 20221164SW0000333C4B

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/1905/2022 -APPEAL/4376-81
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-96/2022-23 dt. 02.11.2022
(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	02.11.2022
(ङ)	Arising out of Order-In-Original issued in in Order No. RFD-06 having ARN AA240422066306I dated 18.04.2022 passed by The Assistant Commissioner, CGST, Division – IV (Changodar), Ahmedabad North Commissionerate passed by The Assistant Commissioner, CGST, 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) Plot No. 5 to 12, Pharmez, Sarkhej-Bavla Highway, Taluka Sanand, Matoda, 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.
	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying –
(i)	(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 the 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 Refund Order dated 13.05.2022 passed in the Form-GST-RFD-06 (*hereinafter referred as 'impugned order'*) rejecting refund of Rs.8,65,845/-, 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 No.24AAACI5120L3ZS. On 18.04.2022 vide ARN No. AA240422066306I, the 'appellant' had filed a Refund claim of Rs.3,54,18,722/- for the period **October-2021 to December-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 No. Z02404220344395 was issued to them on 27.04.2022 for following discrepancies: -

- I. As per Para 47 of Circular No. 125/44/22019-GST dated 18.11.2019, 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 the present case, the claimant have shown Turnover of Zero Rated Supply of goods Rs. 6,40,50,23,257/- as per RFD-01, whereas in view of the above provision of law, they should have considered FOB value of Rs.6,24,84,46,281/-.
- II. Therefore, taking above para into consideration, the refund claim may be calculated as under :-

	Turnover of Zero rated Supply	Adjusted Total Turnover	Net Input Tax Credit	Refund
As per RFD-01	640,50,23,257	640,98,51,401	3,54,45,421	3,54,18,722/-
After considering figures as discussed at Para above	624,84,46,281	640,98,51,401	3,54,45,421	3,45,52,877/-
Refund claim liable for rejection				8,65,845/-

- III. As per the above calculation given in Para II, it appears that the claimant is found eligible for refund of Rs. 3,45,52,877/- and balance refund claim of Rs.8,65,845/- is liable for rejection.



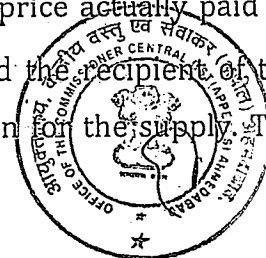
2(ii). The *appellant* has submitted their point-wise reply dated 29.01.2022 before the '*adjudicating authority*'. As regards to Point No. I & II above, the *appellant* has mentioned in their reply that they have exported the goods on CIF basis. Therefore, the taxable value (Transaction Value) in the Tax Invoice and CIF value in the shipping bill would be the same and this Transaction value is correctly taken for the purpose of computing "Turnover of Zero Rated Supplies". The *adjudicating authority* in this regard referred Para 47 of CBIC Circular No. 125/44/2019-GST, dated 18.11.2019. The adjudicating authority has noticed that claimant has considered the value of zero rated supply as the Invoice Value Rs.6,40,50,23,257/- whereas by verifying details of Shipping Bills at Icegate Portal for authentication and the FOB Value of corresponding Shipping Bills comes to Rs.6,24,84,46,281/-. Accordingly, in terms of aforesaid Circular of CBIC the adjudicating authority has considered lower of the above two values i.e. Rs.6,24,84,46,281/- for calculating the eligible amount of refund. Consequently, noticed that claimant has considered Rs.15,65,76,976/- more as Zero Rated Supply Turnover for the purpose of calculation of refund amount. The adjudicating authority has observed that the CIF Value adopted by claimant for calculation of refund amount is not proper and not in accordance with Para 47 of CBIC's Circular No. 125/44/22019-GST dated 18.11.2019. The adjudicating authority satisfied on the point no. III as the appellant has uploaded the required undertaking.

In view of above observation the *adjudicating authority* has rejected the refund claim of Rs.8,65,845/-.

3(i). Against the said rejection of refund claim of Rs.8,65,845/- the *appellant* has preferred present appeal on 03.06.2022. In the appeal memo the *appellant* has stated that refund of Rs.8,65,845/- rejected on the following grounds :-

a) Rs.8,65,845/- rejected in view of Para 47 of Circular No. 125/44/2019-GST ; dated 18.11.2019. The amount of Rs.8,65,845/- was rejected under Section 54(9) of CGST Act, 2017 readwith Sub-rule (3) of Rule 92 of CGST Rules, 2017 on the ground that the appellant had mentioned excess value of zero rated supply in their RFD-01. The adjudicating authority finds that the total value shown by them of Zero rated Supply is not matching with total FOB Value of the Shipping Bills for which refund has been claimed.

b) The *appellant* has referred Section 15 of the CGST Act, 2017 and stated that value of supply of goods shall be the transaction value, 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



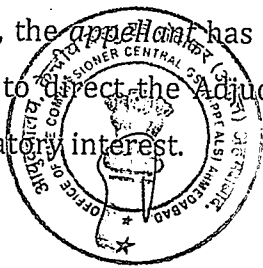
Transaction Value between Exporter and Importer therefore, depends on INCO Terms agreed between them such as FOB, C&F, CIF etc. Such Transaction Value is to be mentioned in the Tax Invoice. The *appellant* has further referred CBIC Circular No. 37/11/2018-GST dated 15.03.2018 and stated that: "If the Exporter is Exporting Goods on CIF Basis (Transaction Value), the CIF Value in Shipping Bill and CIF Value in Tax Invoice will be same. In such case also question of 'lower of the two values' for sanction of refund would not arise." Considering same the *appellant* has stated that they have exported goods on CIF Basis, therefore, the Taxable Value (CIF 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 CBIC's Order No. 59/1/2003-CX., dated 03.03.2003.

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 and OIA No. AHM-CGST-002-APP-JC-67/2021-22, dated 01.12.2021, the Joint Commissioner (Appeals), Ahmedabad has allowed their appeal. Accordingly, the *appellant* has stated that the refund of Rs.8,65,845/- 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".

In view of above, the *appellant* has prayed to set-aside the impugned order, with consequential relief and to direct the Adjudicating Authority to grant full/entire refund amount along with mandatory interest.

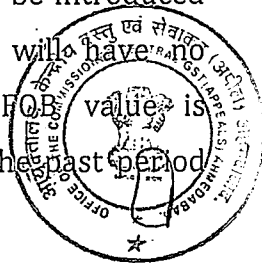


Personal Hearing:

4. Personal Hearing in the matter was through virtual mode held on 13.10.2022, wherein Shri Willingdon Christian, Advocate appeared on behalf of the 'Appellant' as authorized representative. During Personal 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 the adjudicating authority has rejected the refund amount in part in respect of export of goods/ services without payment of tax on the ground that the value of goods exported out of India shall be taken as FOB value and not CIF value. They further submitted that:-

- Explanation introduced in Notification No.14/2022-CT, dated 05.07.2022, stipulates that *"the value of goods exported out of India shall be taken as (i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or (ii) the value declared in tax invoice or bill of supply, whichever is less."*
- The aforesaid explanation undoubtedly is widening tax net as earlier exporters were treating transaction value (CIF Value) reflected in tax invoice as value of goods exported.
- Apart from the above, in the Notification No.14/2022-CT, dated 05.07.2022, it has been mentioned that *"Save as otherwise provided in these rules, they shall come into force on the date of their publication in the official Gazette."*
- In the Notification No.14/2022-CT, dated 05.07.2022 at some places it has been stated that :-
 - a. "In the said rules, with effect from 1st July, 2017, after rule 88A, the rule 88B shall be deemed to have been inserted, namely :-
 - b. Similarly S.No.10 of the Notification is, w.e.f. the 1st day of July, 2017.
- In view of law settled in 2009(14) STR (SC) and 2010(255) ELT 117(Trib.) explanations widening tax net are prospective, substantive law may be introduced by reason of explanation. If substantive law is introduced, it will have no retrospective effect. Accordingly, the amendment related to FOB value is prospective from 05.07.2022 and therefore, it does not apply to the past period matters.



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 30.12.2021 for amount of Rs.3,54,18,722/- of accumulated ITC on account of Export of Goods/Services without payment of Tax. A Show Cause Notice was issued to the appellant on 27.04.2022 for the discrepancies so noticed in respect of said refund claim. Thereafter, the *adjudicating authority* has rejected the refund claim of Rs.8,65,845/- 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.6,40,50,23,257/- for calculating Zero Rated Supply Turn Over, whereas, on Icegate Portal the FOB Value of corresponding Shipping Bills noticed Rs.6,24,84,46,281/-.. Accordingly, the *adjudicating authority* has considered lower value i.e. Rs.6,24,84,46,281/-for calculating eligible amount of refund in terms of Para 47 of CBIC's Circular No. 125/44/22019-GST dated 18.11.2019. Accordingly, the *adjudicating authority* has rejected the refund of Rs.8,65,845/- 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 OIA No. AHM-CGST-002-APP-JC-67/2021-22, dated 01.12.2021, the Joint Commissioner (Appeals), Ahmedabad and stated that the issue involved in the said Orders-In-Appeal is identical to the issue involved in present appeal. I find that in the said Orders, 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 in favour of the appellant.



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 entirely identical to the issue involved in said Orders-In-Appeal. 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 and rejected the refund claim of Rs.8,65,845/-.

The relevant Para 47 of the circular supra is re-produced as under:

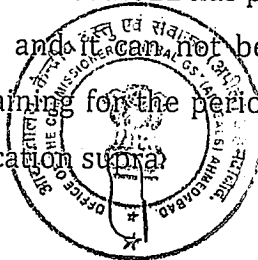
"47. It has also been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs 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 GST 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 Orders-In-Appeal dated 19.08.2019 & 01.12.2021 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 it is observed that the value recorded in Shipping Bills as "Full export value /Amount in INR: Net Realisable" is matched with the value recorded in corresponding Tax Invoice Invoices. I further find that the adjudicating authority has not disputed to the amount of Net ITC and also Total Adjusted Turnover as claimed in the present refund claim. I further find that the Explanation regarding export value introduced vide Notification No.14/2022-CT, dated 05.07.2022 has prospective effect with effect from the date of issue of the notification and it can not be made effective retrospectively. In the present case the refund is pertaining for the period from October-2021 to December-2021 i.e. prior to issue of the Notification *supra*.



F.No. : GAPPL/ADC/GSTP/1905/2022-APPEAL

In view of above stated Orders-In-Appeals dated 19.08.2019 & 01.12.2021 as well as based upon above findings, 'impugned order' is required to be set aside to the extent refund is rejected on this ground.

6. In view of above, the 'impugned order' is set aside to the extent of rejection of refund of Rs.8,65,845/-.

7. 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.

02/11/22
(Mihir Rayka)

Additional Commissioner (Appeals)



Date: 02.10.2022

Attested

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

