



सत्यमेव जयते

आयुक्तकाकार्यालय
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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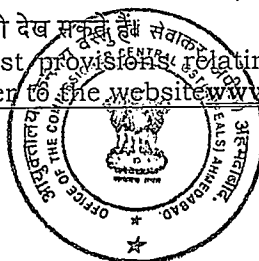


By Regd. Post

DIN NO.: 20230764SW000053.425

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/1188/2023 / 3179 - 35
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-JC-24/2023-24 and 18.07.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	18.07.2023
(ङ)	Arising out of Order-In-Original No. ZM2401230339926 dated 27.01.2023 passed by The Assistant Commissioner, Division-IV, 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.
(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., Plot No. 5 to 12, Pharmez, Sarkhej Bavla Highway, Matoda, Ta : Sanand, Ahmedabad - 382 213 (hereinafter referred as 'Appellant') has filed the present appeal against Order No. ZM2401230339926 dated 27.01.2023 passed in the Form-GST-RFD-06 (hereinafter referred as 'impugned order') rejecting refund claim of Rs. 46,26,712/-, issued by The Assistant Commissioner, CGST & CX, Division-IV, Ahmedabad North Commissionerate (hereinafter referred as the 'adjudicating authority/refund sanctioning authority').

2(i). Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No. 24AAACI5120L3ZS has filed the present appeal on 28.02.2023. The 'Appellant' in the appeal memo stated that they had filed refund application on 20.12.2022 in Form GST-RFD-01 vide ARN No. AA2412220686394 for tax period 01/11/2022 to 30/11/2022 amounting to Rs. 46,26,712/- in respect of category "Any other (Specify)" on account of "Refund application towards unutilized input tax credit lying in our electronic credit ledger upto Oct-2022". The appellant has mentioned that they have been mainly taking credit in their GSTR-3B for-

- a) The credit distributed through Input Service Distributor;
- b) Small portion is for such vendors who have not availed the benefit of zero-rated supplies and raised bill to them with GST;
- c) Re-credit of surrender of export refund to comply with Rule 96B of CGST Rules, 2017.

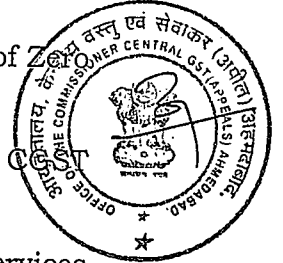
Further, the appellant claimed refund of ITC on Export of Goods and Services without payment of Tax under Rule 89 of CGST Rules, 2017 quarterly basis. Vide Notification No. 14/2022-GST dated 05.07.2022, explanation to sub-rule (4) of Rule 89 of CGST Rules, 2017

"Explanation- For the purposes of this sub-rule, the value of goods exporter 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;

In response to said refund claim a show cause notice No. ZF2401230054460 dated 05.01.2023 was issued to the 'Appellant'. The said SCN it was issued to the appellant on following grounds:



I. Under the GST law, the provisions relating to refund have been provided under Chapter XI of the CGST Act, 2017 (Section 54 to 58) read with Chapter X of CGST Rules, 2017 (Rule 89 to 97A). Accordingly, the claim for refund may arise in the following circumstances:

- (i) Export of goods or services
- (ii) Supplies to SEZs units and developers
- (iii) Deemed Exports
- (iv) Refund of taxes on purchases made by UN or embassies et.
- (v) Refund arising on account of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court
- (vi) Refund of accumulated Input Tax Credit on account of inverted duty structure
- (vii) Finalization of provisional assessment
- (viii) Refund of pre-deposit
- (ix) Excess payment due to mistake
- (x) Refunds to International Tourists of GST paid on goods in India and carried abroad at the time of their departure from India
- (xi) Refund on account of issuance of refund vouchers for taxes paid on advances against which, goods or services have not been supplied;
- (xii) Refund of CGST & SGST paid by treating the supply as intra State supply which is subsequently held as inter-state supply and vice versa

II. As per section 54 of the CGST Act, 2017 a registered person can claim refund of unutilized ITC in case of zero rated supply without payment of tax and in case of inverted duty structure. Section 54(3) reads as under:

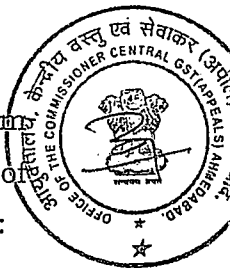
"54(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilized input tax credit at the end of any tax period:

Provided that no refund of unutilized input tax credit shall be allowed in cases other than--

- (i) *Zero rated supplies made without payment of tax;*
- (ii) *Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendation of the Council;*

Provided further that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subject to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.



In the instant case, the claimant has applied for refund of ITC which is accumulated due to the reason explained supra. However, as per the provisions mentioned under Section 54 of the CGST Act, 2017, there is no such category for filing the refund application as claimed by the claimant. Therefore, the refund application for accumulated ITC amounting to Rs. 46,26,712/- filed under "Any Other" category is liable for rejection under provisions of Section 54 of CGST Act, 2017.

2(ii). Further, the 'Appellant' was asked to furnish reply to the Show Cause Notice (SCN) within 15 days from the date of service of SCN. Accordingly, the appellant submitted their written reply / submission on 13.01.2023. Thereafter, the *adjudicating authority* has rejected the refund amount Rs. 46,26,712/- vide *impugned order* on the basis of the following grounds that-

- As per the guidelines issued vide Notification NO. 14/2022-CT date 05.07.2022 regarding considering the FOB value while calculating the eligible refund during a period, their refund amount has been further reduced to the extent of difference between the FOB value and transaction value as declared in Tax invoice and GSTR-1 return which resulted into accumulation of GST credit to that extent. Further, the claimant has mentioned that being an SEZ unit they have no other option but to file a refund claim of unutilized balance of credit as explained supra.

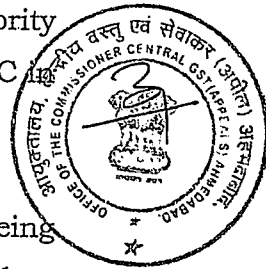
Further, as per Section 54 of the CGST Act, 2017, the adjudicating authority mentioned that, it is clear that any person can claim the refund of unutilized ITC under two conditions namely,;-

- (i) In case of zero rated supplied made without payment of tax and;
- (ii) Where credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies).

In other cases no refund of unutilized ITC is allowed as claimed by the appellant.

In the instant case the claimant has claimed the refund of the ITC which is accumulated after sanctioning the refund of ITC under zero rated supply and the amount of refund of ITC rejected on the ground of consideration of FOB Value as per Notification No. 14/2022-CT dated 05.07.2022 as explained supra.

- Further, in reply to the SCN, the claimant has submitted that they have correctly mentioned the category i.e "Any other (Specify)" for filing the refund claim for accumulated unutilized ITC. In their support, they have quoted the CBI&C's Circular No. 168/ 24/2021-GST dated 30.12.2021 and Circular No. 175/07/2022-GST dated 6.7.2022. The adjudicating authority find that

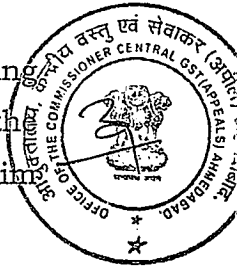


both the circulars are issued on different context and not relevant with the present case. Circular dated 30.12.2021 explains the procedure for Refund claim prior to merger of UT of Dadra & Nagar Haveli and UT of Daman & Diu. Cir dated 6.7.2022 issued with respect to the refund of unutilized ITC on account of export of electricity has been clarified.

Further, the adjudicating authority find that the regular refund filed by the claimant under category "Exports of Goods / Services – without payment of Tax (Accumulated ITC)" has been sanctioned in accordance with the provisions of Section 54 of CGST Act, 2017 read with Rule 89(4) of CGST Rules, 2017 and as per Notification No. 14/2022-CT dtd 5.7.2022. However, ITC balance left (accumulated ITC) due to formula bases deduction while processing the regular refund, does not fall under any category prescribed under Section 54 of the CGST Act, 2017 and accordingly, the refund amount of Rs. 46,26,712/- is liable to be rejected under Sec. 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

3. Being aggrieved with the impugned order the appellant has filed the present appeal on 28.02.2023 wherein they contended that-

- The adjudicating authority has failed to appreciate that being a SEZ Unit, the appellant are entitled to refund of the unutilized ITC as Section 16 of the CGST Act, 2017 provides for input tax credit charged on any supply of goods or services or both by the supplier are used or intended to be used in the course or furtherance of the business. The impugned order has not held that the input tax credit under question is irregular or inadmissible.
- The adjudicating authority has failed to appreciate that tan SEZ unit having a zero rated supply cannot be denied the refund under Section 54 of the CGST Act because there is no express provision for rejecting the refund claim filed under "Any other Category" under the CGST Act, 2017.
- It is submitted that the sole intention of Section 16 of the IGST Act, 2017 which provides for Zero Rated supply is to avoid the cascading effect of taxation including the zero tax liability for exports and hence, the supplies made to a SEZ have been made as zero rated supplies. It is therefore submitted that the entire scheme of GST does not restrict refund of amount of input tax credit to an SEZ unit and on a conjoint reading of section 16 of the IGST Act, 2017 and Section 54 of the CGST Act, 2017 appellants are entitled to get the refund of unutilized ITC lying in the Electronic Credit Ledger.
- The adjudicating authority has admitted that appellants have unutilized input tax credit in their Electronic Credit Register. It is not uncommon to file refund application under "Any other category" when there is not specific category provided in the GST refund application, a SEZ unit who is entitled to obtain refund of unutilized input tax credit under provisions, will not have choice to claim refund other than category " Any other Category". Even

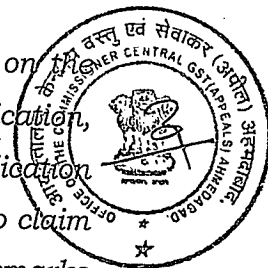


government provided relaxation in such situations in certain cases as per CBI & C's Circular No. 168/24/2021-GST dated 30.12.2021, the relevant text are as under :

"2. Representations have not been received from the field formations and trade / industry that due to transfer of ITC from old GSTIN to new GSTIN, the taxpayers are unable to apply for refund on account of zero-rated supplies and inverted rated structure for the period prior to merger in respect of old GSTIN as they have no ITC available in the electronic credit ledger of the OLD GSTIN for debiting the amount from electronic credit ledger for claiming refund of unutilized ITC. Such taxpayers are also unable to apply for such refund claim from the new GSTIN because all the invoices bear the old GSTIN and the system has certain validations which do not allow the refund applications to be filed from the new GSTIN for the period prior to the merger.

3. The matter has been examined and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017, hereby prescribes the following procedures in respect of the taxpayers, registered in the erstwhile UT of Daman & Diu and who are unable to file refund claim, due to merger of UT of Dadra & Nagar Haveli and UT of Daman & Diu, to enable such taxpayers to file refund claim for the period prior to merger:

- i. The application for refund shall be filed under 'Any other' category on the GST portal using their new GSTIN. In the remarks column of the application, the applicant needs to enter the category in which the refund application otherwise would have been filed. For example, if the applicant wants to claim refund of unutilized ITC on account of export of goods/services, in remarks column, he shall enter 'Refund of unutilized ITC on account of export of goods/services without payment of tax for the period prior to merger of Daman & Diu with Dadra & Nagar Haveli'. The application shall be accompanied by all the supporting documents which otherwise are required to be submitted with the refund claim.
- ii. At this stage, the applicant is not required to make any debit from the electronic credit ledger.
- iii. On receipt of the claim, the proper officer shall calculate the admissible refund amount as per law. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment order in FORM GST RFD-05.



iv. For the categories of refund where debit of ITC is not required, the applicant may apply for refund under the category "Any other" mentioning the reasons in the Remarks column. Such application shall also be accompanied by all the supporting documents which are otherwise required to be submitted along with the refund claim."

- In another CBIC's Circular No. 175/07/2022-GST dated 6.7.2022, government explained the manner of filing refund of unutilized ITC on account of export of electricity has been clarified, the relevant text portion is as under :

"2.1 Till the time necessary changes are carried out on the portal, the applicant would be required to file the application for refund under "Any Other" category electronically in FORM GST RFD-01, on the portal. In remark column of the application, the tax payer would enter "Export of electricity – without payment of tax (accumulated ITC)". At this stage, the applicant is not required to make any debit from the electronic credit ledger."

In both the aforesaid circulars it has been clarified that the taxpayers can claim refund under "Any other" category in FORM GST-RFD-01, on the portal and in remark column of the application, the applicant needs to enter the category in which the refund application otherwise would have been filed. For example, if the applicant wants to claim refund of unutilized ITC on account of export of goods/services, in remarks column, he shall enter "Refund of unutilized ITC on account of export of goods/services without payment of tax."

It is clear that from the text of the both the circulars, when there is a specific column in RFD-01 FORM and when the SEZ unit is entitled to obtain refund of unutilized ITC, then they can claim the same under "Any other" category in the absence of specific category in the application form.

- The appellant have relied upon the aforesaid two circulars only to highlight the point that a SEZ unit who is entitled to obtain refund of unutilized input tax credit under provisions, will not have choice to claim refund other than the category "Any other category". The adjudicating authority has brushed aside these submissions on the findings that the aforesaid two circulars are on different context and therefore not applicable to issue involved.
- The appellant further relied upon on the following case laws:
- (i) Aartos International LLP (Formerly Azuvi International LLP) Vs. Deputy Commissioner (Customs) – 2022 (12) TMI 703- Gujarat High Court;
 - (ii) M/s. IPCA Laboratories Ltd Vs. Commissioner -2022 (63) G.S.T.L. 187 (Guj.)
 - (iii) M/s. Britannia Industries Limited Versus Union of India reported in 2020 (9) TMI 294 – Gujarat High Court;



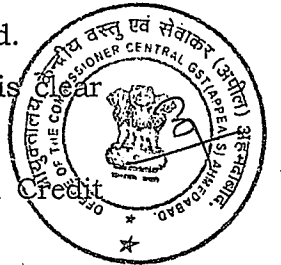
The adjudicating authority citing the reason that in this case the department has already filed an appeal before H'ble Supreme Court of India against the order of H'ble HC of Gujarat and case is still pending for decision.

They further submitted that it is well settled that the judgments of High Courts are to be followed even in cases where appeal is preferred by the Department. Grant of stay by SC against HC's order does not mean ratio of HC decision cannot be followed by the other Courts. For this they have placed reliance on the following case laws and stated that the appellants are under the jurisdiction of Gujarat HC and the following judgments are binding on revenue:

- a) 2022 (379) ELT 106 (Telangana) CCE Vs. DRD Body Techs India Pvt Ltd;
- b) 2021 (376) LT 257 (Bom.) – Himgiri Buildcon & Inds. Ltd Vs. UOI
- c) 2021 (48) GSTL 354 (T) – CCE & ST Vs. Kalpataru Power Transmission Ltd.
- d) 2021 (55) GSTL 144 (Mad.) – T.V. Sundram Iyengar & Sons Pvt Ltd Vs. CCE
- e) 2020 (374) ELT 552 (Bom.) – Ganesh Benzoplast Ltd Vs. UOI
- f) 2020 (39) GSTL 261 (Mad.) – CCE Vs. Pay Pal India Pvt. Ltd.
- g) 2016 (340) ELT 88 (Del.) – YU Televentures Pvt. Ltd Vs. UOI
- h) 2016 (42) STR 821 (Guj.) – CCE Vs. Surat Tennis Club
- i) 2008 (227) ELT 61 (All.) – Shahnaz Hussain Vs. State of UP
- j) 2008 (86) RLT 501 (Cestat) – CCE Vs. K G Denim Ltd
- k) 1991 (55) ELT 433 (SC) – UOI Vs. Kamalakshi Finance Corp Ltd.

➤ The appellant submitted that from the submissions made above, it is clear that

- (a) Appellant are a SEZ unit and have accumulated Input Tax Credit related to Export of goods which is a "Zero Rated Supply";
- (b) In case of Zero Rated supplies, the Input Tax Credit is refundable;
- (c) The accumulation of Input Tax Credit is due to the bona-fide reasons discussed above and it was not disputed in the impugned order that the Input Tax Credit in question is not admissible to Appellants;
- (d) Since there was no specific column, appellant have claimed the refund of Input Tax Credit under "Any other category" and use of such category / column in the absence of specific category is well known and acceptable as clarified by CBIC under aforesaid two circulars;
- (e) SEZ is not expected to bear the burden of Taxes and this principle is clear from the SEZ Act and SEZ Rules read with IGST Act, 2017 and FTP;
- (f) Appellants have already claimed refund of ITC under rule 89(4) for the said period cannot be a ground to deny refund of ITC accumulated due to the reasons explained hereinabove.



- The appellant requested to set aside the impugned order with consequential relief.

Personal Hearing:

3. Personal hearing in the matter was held on 13.07.2023 in virtual mode. Mr. Willingdon Christian, Advocate, appeared online on behalf of the appellant before the appellate authority and re-iterated the written submissions that they have filed the refund application under Any Other Category for amount accumulated. The appellant is a SEZ unit and claim is filed for unutilized ITC. He further submitted that the case of M/s. Britannia Industries Vs. UOI, passed by the H'ble Gujarat High Court, is squarely applicable and pray to allow the appeal.

Discussion and Findings:

4(i). I observed that in the instant case the "impugned order" is of 27.01.2023 and appeal is required to be filed within three months time limit as per Section 107(1) of the CGST Act, 2017. The present appeal is filed on 28.02.2023 (documents submitted on 2nd March 2023), therefore as per Section 107(1) of the CGST Act, 2017, I find that the present appeal is considered to be filed in time.

4(ii). I have carefully gone through the facts of the case and the submissions made by the appellant that the main issue in this case is, whether the impugned order passed by the adjudicating authority is proper and legal or otherwise?

4(iii). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal Memorandum and written submissions. I find that the 'Appellant' had preferred the refund application vide ARN NO. AA2412220686394 dated 20.12.2022 in Form GST-RFD-01 for Rs. 46,26,712/- in the category "Any Other(Specify)" on account of "Refund application towards unutilized input tax credit lying in our electronic credit ledger upto Oct-2022" due to Export of goods / service - without payment of tax (accumulated ITC) for the tax period 1.11.2022 to 30.11.2022 (i.e Month of November 2022). Subsequent to the said refund application, a Show Cause Notice No. ZF2401230054460 dated 05.01.2023 was issued to the appellant. Thereafter, the appellant submitted their reply to the said SCN on dated 05.01.2023 which was not considered by the adjudicating authority. Subsequently, the said refund claim amounting to Rs. 46,26,712/- rejected by the *adjudicating authority* vide *impugned order* on the basis of reasons mentioned in SCN and on the following grounds:

- As per the guidelines issued vide Notification No. 14/2022-CT date 05.07.2022 regarding considering the FOB value while calculating the eligible refund during a period, their refund amount has been further



reduced to the extent of difference between the FOB value and transaction value as declared in Tax invoice and GSTR-1 return which resulted into accumulation of GST credit to that extent. Further, the claimant has mentioned that being an SEZ unit they have no other option but to file a refund claim of unutilized balance of credit as explained supra.

Further, as per Section 54 of the CGST Act, 2017, the adjudicating authority mentioned that, it is clear that any person can claim the refund of unutilized ITC in two conditions namely,;-

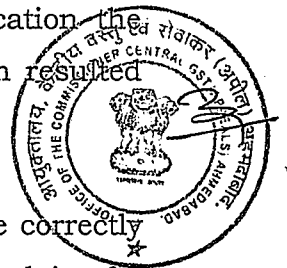
- (iii) In case of zero rated supplied made without payment of tax and;
- (iv) Where credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies).

In other cases no refund of unutilized ITC is allowed as claimed by the appellant.

In the instant case, the claimant has already accounted for, the ITC value while filing their regular refund already and same is deducted / not found eligible as per explanation to Rule 89(4) of the CGST Rules, 2017. The claimant has claimed the refund of the ITC which is accumulated after sanctioning the refund of ITC under zero rated supply and the amount of refund of ITC rejected on the ground of consideration of FOB Value as per Notification No. 14/2022-CT dated 05.07.2022 as explained supra. In the Notification No. 14/2022-CT dated 05.07.2022, it is clarified that the value of goods exported out of India shall be the FOB value or invoice value, whichever is lower. After considering the above clarification, the refund claim is restricted and rejected by taking the lower value, which resulted into accumulation of ITC.

Further, in reply to the SCN, the claimant has submitted that they have correctly mentioned the category i.e "Any other (Specify)" for filing the refund claim for accumulated unutilized ITC. In their support, they have quoted the CBI&C's Circular No. 168/ 24/2021-GST dated 30.12.2021 and Circular No. 175/07/2022-GST dated 6.7.2022. The adjudicating authority find that both the circulars are issued on different context and not relevant with the present case. Circular dated 30.12.2021 explain the procedure for Refund claim prior to merger of UT of Dadra & Nagar Haveli and UT of Daman & Diu. Cir dated 6.7.2022 issued w.r.t refund of unutilized ITC on account of export of electricity has been clarified.

Further, the adjudicating authority has mentioned in the impugned order that the regular refund filed for the tax period by the appellant under category "Exports of Goods / Services – without payment of Tax (Accumulated ITC)" has already been sanctioned in accordance with the provisions of Section 54 of CGST Act, 2017 read with Rule 89 of CGST Rules, 2017 and as per Notification No. 14/2022-CT dtd 5.7.2022. However, ITC balance left (accumulated ITC) due to formula based



deduction while processing the regular refund, does not fall under any category prescribed under Section 54 of the CGST Act, 2017 and accordingly, the refund amount of Rs. 46,26,712/- is liable to be rejected under Sec. 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

5. From the impugned order passed by the adjudicating authority, I find that the appellant in the present appeal contended that they are eligible for refund amounting to Rs. 46,26,712/- under the category "Any other (Specify)" on account of ITC balance left (accumulated ITC) due to formula based deduction, while processing the regular refund for the relevant period. I refer to the provisions of Section 54 of the CGST Act, 2017, which are re-produced as under:

Section 54. Refund of tax. - *

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in ¹[such form and] manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

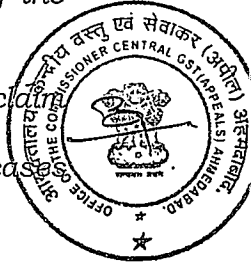
Provided that no refund of unutilised input tax credit shall be allowed in cases other than-

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

PROVIDED FURTHER that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

PROVIDED ALSO that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies. "



As per the provisions of Section 54 of the CGST Act, 2017, I find that any person can claim the refund of unutilized ITC in two conditions, viz.,

- (i) Zero rated supplies made without payment of tax and;
- (ii) Where credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies)

In the present case, I find that the appellant has claimed the refund of ITC which is accumulated **after sanctioning the refund of ITC** under zero rated supply and the amount of refund of ITC rejected on the ground of consideration of FOB value (and Tax invoice value, whichever is less), as per Notification No. 14/2022-CT dated 05.07.2022. While Board has clarified the issue and restricted the refund amount by issuance of Notification, it is binding on revenue as well as the claimant. Therefore, I do not find any merit in the contention of the appellant in this regard.

6. Further in the instant case, I find that the appellant has taken plea and made reliance on the CBI & C's Circular No. (i) 168/24/2021-GST dated 30.12.2021; and (ii) 175/07/2022-GST dated 6.7.2022

6.1 I refer to the CBI & C's Circular No. 168/24/2021-GST dated 30.12.2021, the relevant text are as under:

"2. Representations have not been received from the field formations and trade / industry that due to transfer of ITC from old GSTIN to new GSTIN, the taxpayers are unable to apply for refund on account of zero-rated supplies and inverted rated structure for the period prior to merger in respect of old GSTIN as they have no ITC available in the electronic credit ledger of the OLD GSTIN for debiting the amount from electronic credit ledger for claiming refund of unutilized ITC. Such taxpayers are also unable to apply for such refund claim from the new GSTIN because all the invoices bear the old GSTIN and the system has certain validations which do not allow the refund applications to be filed from the new GSTIN for the period prior to the merger.

3. The matter has been examined and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017, hereby prescribes the following procedures in respect of the taxpayers, registered in the erstwhile UT of Daman & Diu and who are unable to file refund claim, due to merger of UT of Dadra & Nagar Haveli and UT of Daman & Diu, to enable such taxpayers to file refund claim for the period prior to merger:

i. The application for refund shall be filed under 'Any other' category on the GST portal using their new GSTIN. In the remarks column of the application, the applicant needs to enter the category in which the refund application otherwise would have been filed. For example, if the applicant wants to claim refund of unutilized ITC on account of export of goods/services, in remarks column, he shall enter 'Refund of unutilized ITC on account of export of goods/services without payment of tax for the period prior to merger of Daman & Diu with Dadra & Nagar Haveli'. The application shall be accompanied by all the supporting documents which otherwise are required to be submitted with the refund claim.

ii. At this stage, the applicant is not required to make any debit from the electronic credit ledger.



iii. On receipt of the claim, the proper officer shall calculate the admissible refund amount as per law. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment order in FORM GST RFD-05.

iv. For the categories of refund where debit of ITC is not required, the applicant may apply for refund under the category "Any other" mentioning the reasons in the Remarks column. Such application shall also be accompanied by all the supporting documents which are otherwise required to be submitted along with the refund claim....."

6.2 In another CBIC's Circular No. 175/07/2022-GST dated 6.7.2022, government explained the manner of filing refund of unutilized ITC on account of **export of electricity** has been clarified, the relevant text portion is as under :

"..... In order to clarify various issues and procedure for filing of refund claim **pertaining to export of electricity**, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby prescribed the following procedure for filing and processing the refund of unutilized ITC on **account of export of electricity**:

2. Filing of refund claim:

2.1 Till the time necessary changes are carried out on the portal, the applicant would be required to file the application for refund under "**Any Other**" category electronically in FORM GST RFD-01, on the portal. In remark column of the application, the tax payer would enter "**Export of electricity – without payment of tax (accumulated ITC)**". At this stage, the applicant is not required to make any debit from the electronic credit ledger.

2.2 The applicant would be required to furnish/upload the details contained in statement 3B (and not in Statement 3) of FORM GST RFD-01 (in pdf format), containing the number and date of the export invoices, **details of energy exported, tariff per unit for export of electricity as per agreement..**"

From the abovementioned two circulars, I find that the adjudicating authority has rightly mentioned that both the circulars are issued on different context and not relevant with the present case of the appellant. I held that Circular No. 168/23/2021-GST dated 30.12.2021 pertaining to the procedure for Refund claim prior to merger of UT of Dadra & Nagar Havel and UT of Daman & Diu. I also held that Circular No.175/07/2022-GST dated 6.7.2022 issued by the Board, pertaining to the refund of unutilized ITC on account of **export of electricity**.



6.3 Further, the appellant made reliance upon the judgment of the H'ble Gujarat High Court, in the case of M/s. Britannia Industries Limited Vs Union Of India, reported on 2020(42) GSTL 3(Guj), wherein, I find that the case pertaining to the refund claim which was initially filed under the category "Any other" by the petitioner with regard to the credit of IGST distributed by ISD for the services pertaining to the SEZ unit, while in the instant case of the appellant, regular refund have already been sanctioned to the appellant as per Board's Notification No. 14/2022-CT dated 5.7.2022. In view of the above, I find that the cited case law does not squarely applicable to the appellant in this case. Therefore, once refund is already sanctioned for ITC accumulated under Rule 89(4) on export of goods under Bond or Letter of Undertaking (LUT) for the same period, the refund of balance of ITC (accumulated ITC) under "Any Other" category is not eligible as no such provisions exist to grant such refund in any other category for the same period. Therefare two refund claims for the same invoices / Shipping Bills for the same period cannot be claimed under two different categories.

I find that since refund is already granted of ITC for the export of goods as per formula prescribed under Rule 89(4), I do not find any infirmity in the order passed by the refund sanctioning authority and therefore the appeal filed by the appellant is not maintainable. Hence, I upheld the impugned order passed by the adjudicating authority.

7. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is legal & proper in the eyes of the law and accordingly, I reject the appeal of the "Appellant" without going into the 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 appeal filed by the appellant stands disposed of in above terms.

Asesh Kumar Jain
18/07/2023

(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: 18.07.2023

Attested

Tejas J Mistry

(Tejas J Mistry)
Superintendent,
CGST, Appeals, Ahmedabad

By R.P.A.D.

To,
M/s. Intas Pharmaceuticals Ltd., Plot No. 5 to 12, Pharmedz,
Sarkhej Bavla Highway, Matoda,
Ta : Sanand, Ahmedabad - 382 213



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 Assistant Commissioner, CGST & C. Ex, Division-IV, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication on the website.
7. Guard File / P.A. File



