



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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DIN NO.: 20231164SW0000666EEB

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/1845/2023 / २६१३ - २६१३
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-87/2023-24 and 30.10.2023
(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	03.11.2023
(ङ)	Arising out of Order-In-Original No. ZK2404230238696 dated 19.04.2023 passed by The Assistant Commissioner, CGST, Division-IV, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Expert Pharmaceuticals (P) Ltd (GSTIN: 24AADCE4717G1ZX), Plot No. 4& 5, B/h Sarvoday Hotel, Village: Moraiya, Taluka: Sanand, Ahmedabad-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 <u>twenty five per cent</u> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



**ORDER-IN-APPEAL**

**Brief Facts of the Case :**

M/s. Expert Pharmaceuticals (P) Ltd, Plot No. 4 & 5, B/h Sarvoday Hotel, Village: Moraiya, Taluka: Sanand, Ahmedabad-382213 (GSTIN No.24AADCE4717G1ZX) (hereinafter referred as "Appellant") has filed the present appeal against Order No. ZK2404230238696, dated 19.04.2023 passed in the Form-GST-RFD-06 (hereinafter referred as "impugned order") rejecting the refund claim of Rs.93,569/- out of total claim of Rs.1,28,179/-, issued by the Assistant Commissioner, CGST & C.Ex.,Division-IV, Ahmedabad-North (hereinafter referred as 'adjudicating authority').

2. Briefly stated the facts of the case is that the 'Appellant' engaged in manufacturing of pharmaceutical products, had filed refund application for refund of Rs.1,28,179/- for the tax period March, 2021 on 07.03.2023 on account of ITC accumulated due to inverted tax structure. As per verification of returns and documents submitted by the appellant, it was noticed that :

- (i) turnover of inverted rated supply is shown Rs. 48,32,542/-, whereas the same was found to be Rs.46,50,542/- ,
- (ii) tax payable on such inverted supply is shown Rs. 4,87,688/-, whereas the same is found to be Rs. 5,58,062/- and
- (iii) total 23 invoices/bills of entry involving total amount of ITC Rs.5,18,347/- are not reflected in the GSTR-2A, therefore, the ITC of Rs.5,18,347/- is ineligible for refund calculation.

Therefore a Show-cause-notice dated 23.03.2023 was issued to the appellant for the said discrepancies, noticed.

3. The adjudicating authority vide the impugned order dated 19.04.2023 rejected the refund claim of Rs. 93,569/- out of total claim of Rs.1,28,179/- and sanctioned refund of Rs. 34,610/- only.

4. Being aggrieved with the impugned order the appellant has filed the present appeal on 26.05.2023 [online on 23.05.2023] wherein they have stated that:-

- The adjudicating authority has not appreciated the facts and circumstance of the case and therefore, the denying refund accumulated ITC due to inverted duty structure is not proper and legal.



- The refund is partially rejected on the ground that the appellant has not produced the details of ITC of Input services as per amended Notification No. 14/2022-CT dated 05.07.2022 but the said ground was not mentioned in SCN dated 23.03.2023 and the appellant did not provide the details of ITC of input service. Therefore, on this ground, said refund order is not rejected.
- The refund Order No. ZK2404230238696, dated 19.04.2023 rejected partially refund is travelled beyond the SCN as explained above. Therefore, on this ground even, the said refund claim order is not sustainable.
- The appellant submitted the calculation sheet of refund amount showing how they have arrived at the refund amount and that at the time of filing original refund application, there was an error in the calculation sheet as they had shown less amount to the tune of Rs. 93,644/- (CGST Rs. 46,822/- + SGST Rs. 46,822/-) as ITC of input services and actual ITC of Input services should be Rs. 2,02,347/- instead Rs. 1,14,380/- and accordingly ITC of Capital Goods would be reduced to Rs. 4,31,725/- (CGST Rs. 1,81,544/- + SGST Rs. 1,81,544/-) instead of Rs. 5,25,368/-
- Therefore, Rs. 93,644/- (CGST Rs. 46,822/- + SGST Rs. 46,822/-) less ITC of input services shown and excess ITC of Rs. Rs. 93,644/- (CGST Rs. 46,822/- + SGST Rs. 46,822/-) of capital goods shown and accordingly appellant submitted corrected refund calculation sheet.
- In view of above, if they rectify this mistake, the refund amount comes to Rs.1,82,563/- instead of Rs.1,28,179/-

In view of the above submission, the appellant has requested to allow the appeal by way of setting aside the impugned order.

5. Personal Hearing in the matter was held on 18.08.2023 wherein Shri Namimesh K.Oza, Advocate on behalf of the appellant as authorized representative appeared in person. He submitted that the Ld. adjudicating authority has not raised the issue (service invoices) on which ground the refund was rejected, thus no opportunity has been provided to explain the issue. Therefore, the order issued by the Refund sanctioning authority is bad in law and required to be set aside. He further submitted additional written submissions during the personal hearing.

DISCUSSIONS AND FINDINGS:

6. I have gone through the facts of the case, available documents on record and written submissions made by the 'Appellant'. I find that the main issue to be decided in the instant case is:

(i) whether the impugned refund order passed by the Adjudicating Authority is legal & proper or otherwise?

6.1 At the foremost, I observed that in the instant case the "impugned order" is of dated 19-04-2023 and the present appeal is filed online on 23-05-2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. Therefore, I find that the present appeal is filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

6.2 I find that the present appeal is filed to set aside the impugned order as the adjudicating authority has rejected an amount of Rs.93,569/- out of total claim of Refund of Rs.1,28,179/- as per Section 54(3) of CGST Act, 2017 and Rule 89 (5) of the CGST Rules, 2017 and not taken the amount of ITC of input services for refund calculation for the reason that the appellant has not submitted the details of input services in the reply dated 04.04.2023 under for GST-RFD-09 and additional reply dated 13.04.2023.

6.3 The appellant has submitted that the ground that the appellant has not produced the details of ITC of input service as per Notification No.14/2022 dated 05.07.2022 on which the refund has been partly rejected is not mentioned in the SCN. The appellant has submitted calculation sheet for claiming refund under inverted duty structure scheme for March-2021.

6.4 I find that the amount of ITC of services has to be included for calculation of refund as per the Notification No.14/2022-CT dated 05.07.2022. The text of the said Notification is as under:

"8. In the said rules, in rule 89, -

(d) in sub-rule (5), for the words -tax payable on such inverted rated supply of goods and services//, the brackets, words and letters -{tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)}, shall be substituted;"

6.5 The text of Rue 89(5) of the CGST Rules, 2017 is as under:



**Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-**

<sup>8</sup>[(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC Adjusted Total Turnover} - <sup>12</sup>{tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)}].

**Explanation:** - For the purposes of this sub-rule, the expressions -

(a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

<sup>9</sup>["Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).]

8. Substituted w.e.f. 01.07.2017 vide Notification No. 26/2018-CT dated 13.06.2017 for

"(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula -

Maximum Refund Amount = {(Turnover of inverted rated supply of goods) x Net ITC Adjusted Total Turnover} - tax payable on such inverted rated supply of

Goods  
**Explanation.-** For the purposes of this sub rule, the expressions "Net ITC" and "Adjusted Total turnover" shall have the same meanings as assigned to them in sub-rule (4)."

Substituted vide Notification No. 74/2018-C.T., dated 31.12.2018 for

"(5) Adjusted Total turnover shall have the same meaning as assigned to it in sub-rule (4)."

10. Inserted vide Notification No. 35/2021-C.T., dated 24.09.2021. Brought into force w.e.f. 01.01.2022 vide Notification No. 38/2021-C.T., dated 21.12.2021.

11. Inserted by Notification No. 14/2022- CT, dated 05.07.2022.

12 Substituted by Notification No. 14/2022- CT, dated 05.07.2022 For "tax payable on such inverted rated supply of goods and services"

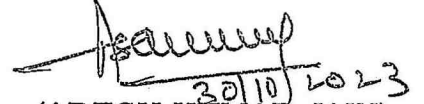
6.6 From the above, I am of the view that the amount of ITC on input services shall be taken into consideration for the purpose of calculation of refund claim on account of inverted duty structure filed by the appellant. The appellant shall not be denied their legitimate right permissible under the law.

7. In view of above discussions, the impugned order passed by the adjudicating authority is set aside and the appellant is directed to produce the details of ITC of Input services for the period March-2021,



to the adjudicating authority i.e. refund sanctioning authority. The refund sanctioning authority shall re-calculate the refund after examining the eligible ITC amount and consider the said amount for the purpose of calculation of refund and pass the order accordingly.

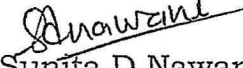
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeal filed by the *appellant* stands disposed of in above terms.

  
20/10/2023  
(ADESH KUMAR JAIN)

JOINT COMMISSIONER(APPEALS)  
CGST & C.EX., AHMEDABAD.

Date : .10.2023

Attested

  
(Sunita D.Nawani)  
Superintendent,  
CGST & C.Ex.,  
(Appeals), Ahmedabad

By R.P.A.D.



To

M/s. Expert Pharmaceuticals (P) Ltd,  
Plot No. 4 & 5, B/h Sarvoday Hotel,  
Village: Moraiya, Taluka: Sanand,  
Ahmedabad-382213  
(GSTIN No.24AADCE4717G1ZX)

Copy to:

- 1.The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Appeals, Ahmedabad
- 3.The Commissioner, CGST &C.Ex, Ahmedabad-North Commissionerate.
- 4.The Dy / Assistant Commissioner, CGST & C.Ex, Division-IV, Ahmedabad-North Commissionerate.
- 5.The Additional Commissioner, Central Tax (System), Ahmedabad-North Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File/P.A. File.

