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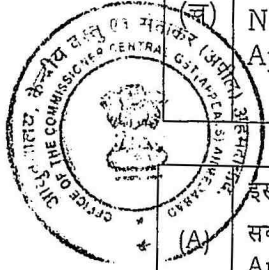
आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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By Regd. Post

DIN NO.: 20240464SW000000D10B

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2429/2022 & GAPPL/ADC/GSTP/2 to 6/2023 / 10686 - 94
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-6 to 11/2024-25 and 26.04.2024
(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	30.04.2024
(ङ)	Arising out of Order-In-Original Nos. ZU2406210281007 dated 22.06.2021, ZV2407210307886 dated 22.07.2021, ZO2408210034376 dated 29.07.2021, ZN2409210051466 dated 03.09.2021, ZX2409210180855 dated 13.09.2021 and ZW2411210170357 dated 12.11.2021 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 Otsuka Pharmaceuticals India Private Limited (GSTIN: 24AAFCC0602G1ZD) Plot No. 199, 200, 201, 206 to 210, Village Vasna Chacharwadi, Sanand, Changodar GIDC, 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 Otsuka Pharmaceuticals India Private Limited (GSTIN 24AAFCC0602G1ZD), Plot No. 199, 200, 201, 206 TO 210, VILLAGE VASNA, CHACHARWADI, Sanand, Changodar GIDC, Ahmedabad, Gujarat, 382213 (herein after referred as appellant) had filed the appeals against the Orders as tabulated below (herein after referred as "impugned orders) rejecting part of the refund claims of the amounts as shown against the orders, passed by the Assistant Commissioner CGST & C.Ex. Division-IV [Changodar], Ahmedabad-North (referred as "adjudicating authority").

Details of the appeals/orders, refund amount/ rejected are as under.

Sl. No.	Appeal No.	Order No. & date	Period involved	Refund applied for (Rs.)	Refund rejected (Rs.)
1	GAPPL/ADC/GSTP/2429/2022	ZU2406210281007 dated 22.06.2021	April-19 to June-19	16587646	3447990
2	GAPPL/ADC/GSTP/5/2023	ZV2407210307886 dated 22.07.2021	July-2019 to Sep-2019	20369537	3995637
3	GAPPL/ADC/GSTP/4/2023	ZO2408210034376 dated 29.07.2021	October-2019 to December-2019	30302218	5349422
4	GAPPL/ADC/GSTP/2/2023	ZN2409210051466 dated 03.09.2021	Jan-2020 to March-2020	14791842	1318459
5	GAPPL/ADC/GSTP/6/2023	ZX2409210180855 dated 13.09.2021	April-2020 to SEP.-2020	64416239	10842017
6	GAPPL/ADC/GSTP/3/2023	ZW2411210170357 dated 12.11.2021	October-2020 to March.-2021	45499447	6278699

2. The Appellant being aggrieved with the impugned orders had filed appeals before the Appellate authority on the following grounds:

"(a) Refund of ITC once availed appropriately and reconciled with GSTR-2A cannot be denied on flimsy ground. Rule 89 of the CGST Rules; provides for refund of unutilized ITC in case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking.

(b) The adjudicating Officer has completely disregarded the submissions made by the appellant and has passed the OIO without application of mind and the order is non-speaking. Rejection of refund for past invoices will result into absurdity.

(c) Without prejudice to the above, in any case, even if the ITC pertaining to prior period invoices are disallowed for the refund purpose, the same cannot be applicable on ITC of GST paid under RCM.

(d) The discussions and findings in the OIO are in disagreement with the CBIC Circular No. 125/44/2019-GST, dated 18.11.2019.

(e) Circular issued by Board are binding orders for the department officers and cannot be ignored by the officer while passing the order.

(f) There is no mismatch in the values declared in the shipping bills filed by them and denial of refund on such ground is unjustified and bad in law.”

The appellant had further prayed to set aside the impugned order.

3. The appellate authority observed that the Appellant had failed to submit the certified copies of decision or orders within the period as stipulated under Rule 108 of the CGST Rules, 2017 in respect of the appeals filed, the details of which are shown in the Table above and there was inordinate delay ranging from 71 days to 106 days. Thus it was found that the subject appeals had been filed beyond the time limit as prescribed under the CGST Act 2017 / CGST Rules, 2017 and hence could not be entertained. The appellate authority further, found that the period of limitation of 90 days as per Hon'ble Supreme Court's Order dated 10-1-2022 in suomotu writ petition (c) NO.3 of 2020 in MA No.665/2021 had also already been completed on 29.05.2022 and hence, the subject cases would not be eligible for the relaxation / extension granted by the Hon'ble Supreme Court in respect of period(s) of limitation as mentioned above from the dates on which the said decision or impugned orders were communicated to the appellant. Accordingly, the appellate authority found that the further proceedings in case of these appeals could be taken up for consideration strictly as per the provisions contained in the CGST Act 2017/CGST Rules, 2017. Thus, the appeals filed by the appellant Annexed at Table above were rejected on the time limitation factor without going into merit of the cases vide OIA No. AHM-CGSST-002-APP-ADC-145 to 150/2022-23 dated 30.01.2023.

4. Therefore, the appellant filed Special Civil Application No. 13209, 13210, 13212, 13213, 13215 and 13285 of 2023 before the Hon'ble High Court of Gujarat, against the above OIAs. The Hon'ble High Court of Gujarat in the said SCAs, in view of the amendment in Rule 108 and Rule 109 of the CGST Act, 2017 as per the Minutes of 48th Meeting of GST Council held on 17.12.2022 ordered as under:

“In view of the above amendment which would have a retrospective effect as the same is a clarificatory in nature and therefore, the impugned order passed by the appellate authority rejecting the appeal on the ground of delay would not survive. The impugned order is, accordingly, quashed and set aside and the matter is remanded back to the appellate authority to pass a fresh de novo order on merits after giving opportunity of hearing to the petitioner.

7. It is clarified that this Court has not gone into the merits of the matter and the same to be decided by the appellate authority after giving opportunity of hearing to the petitioner in accordance with law.

7.1 Such exercise shall be completed within 12 weeks from the date of receipt of copy of this order.

8. The petitions are accordingly disposed of. No order as to costs. Notice is discharged."

In view of the above order of the Hon'ble Gujarat High Court, personal hearing in the case was granted to the appellant on 19.04.2024.

5. Personal Hearing:

Personal Hearing in the matter was held virtually on 19.04.2024, wherein Shri Tapas Ruparelia, Chartered Accountant appeared on behalf of the 'Appellant' as Authorized Representative before the appellate authority. He submitted that there are three issues:

- i) Prior period invoices,
- ii) FOB Value Vs. CIF Value in formula of refund,
- iii) Invoices not reflecting in GSTR-2A.

Further, it has been submitted that first two issues are already settled and appeals allowed in their favour. As regards the third issue, they accept and do not intend to pursue further. Additional submissions will be submitted by email.

Additional Submissions: Copy of OIA AHM-CGST-002-APP-JC/26 to 28/2023-24 dated 24.07.2023 and copies of OIOs passed by the Assistant Commissioner, CGST Division-IV, Ahmedabad North in refund applications filed for the year 2022-23.

6 Discussion and Findings:

6.1. I have carefully gone through the facts of the case and the submissions/additional submissions made by the Appellant and find that the, appellant is mainly contesting with, the following:

(i) If the refund is restricted to FOB value of goods exported, the said value has to be considered in the numerator as well as denominator while calculating the refund eligibility.

(ii) Denial of refund claim proportionate to the ITC availed during the claim period on the strength of invoices issued during the past period.

6.2 So the issue to be decided in the present appeal is:

Whether the order passed by the adjudicating authority is proper or otherwise?

6.3 As the appeals filed by the appellant against the "impugned orders" passed by the adjudicating authority are identical in nature, all these appeals are taken up together for deciding on merit, in accordance with the provisions of CGST/SGST Act, 2017/ Rules, 2017/IGST Act, 2017.

6.4 I observe that the appellant has submitted the summary of all refund applications which is as under:

SL.N o.	Appeal No.	Refund claimed (RFD-01)	Refund sanctioned (RFD-06) (Rs.)	Refund rejected (RFD-06) (Rs.)	Reasons for rejection with amount		
					Refund rejected due to ITC of prior period	Refund rejected due to diff. in export value/FOB	Refund rejected due to in correc t ITC
1	April-19 to June-19	16587646	13139656	3447990	3199365	248625	0
2	July-2019 to Sep-2019	20369537	16373900	3995637	3415353	580284	0
3	October-2019 to December-2019	30302218	24952796	5349422	5013858	302839	32725
4	Jan-2020 to March-2020	14791842	13473383	1318459	1073690	244769	0
5	April-2020 to SEP.-2020	64416239	53574222	10842017	10839488	0	2529
6	October-2020 to March.-2021	45499447	39220748	6278699	3887919	2390780	0
	Total	191966929	160734705	31232224	27429673	3767297	35254

6.5 The appellant has submitted that their refund has been rejected mainly on the following three reasons:

- (i) ITC pertaining to a period prior to the period for which refund application was filed,
- (ii) Value of zero rated supply (value of goods exported) was considered as FOB value instead of the CIF value (it is to be noted that the formula was also incorrectly considered) and
- (iii) ITC pertaining to certain vendor/procurement invoices which were not reflected in GSTR2-A.

Further, the appellant is contesting with the first two reasons of rejection of their refunds, therefore the same are taken up for decision here under:

6.6 As regards to the denial of refund claim proportionate to the (i) ITC pertaining to a period prior to the period for which refund application was filed, I refer to Section 16 of the CGST Act, 2017 which stipulates the Eligibility and conditions for taking input tax credit, relevant portion of the same is reproduced hereunder:

***Section 16. Eligibility and conditions for taking input tax credit.-**

4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the ⁶[thirtieth day of November] following the end of financial year to which such invoice or ⁷[****] debit note pertains or furnishing of the relevant annual return, whichever is earlier.

⁸[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

6. Substituted (w.e.f. 1st October, 2022 vide Notification No. 18/2022 - CT dated 28.09.2022.) by s. 100 of The Finance Act 2022 (No. 6 of 2022) for "due date of furnishing of the return under section 39 for the month of September".

7. Omitted "invoice relating to such" (w.e.f. 1st January, 2021 vide Notification No. 92/2020-C.T., dated 22nd December, 2020) by s. 120 of The Finance Act, 2020 (No. 12 of 2020) .

8. Inserted vide Order No. 02/2018 -Central Tax dated 31st December, 2018.

6.7 From the above, it is clear that a tax payer shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the "due date of furnishing of the return under section 39 for the month of September" following the end of financial year to which such invoice or [****] debit note pertains or furnishing of the relevant annual return, whichever is earlier, till the same was amended w.e.f. 1st October, 2022 vide Notification No. 18/2022 - CT dated 28.09.2022 i.e. [thirtieth day of November] following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

6.8 In the instant case, the refund applied vide above 6 refund applications, is involving the period from April-2019 to March-2021, hence the appellant was entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both issued during the period of FY 2019-20, till the due date of furnishing of the return under section 39 for the month of September-2020, and of FY 2020-21 till the due date of furnishing of the return under section 39 for the month of September-2021, or furnishing of the relevant annual returns, whichever is earlier, if otherwise fulfilling the conditions of availment as per the provisions of CGST/SGST/IGST. I observe that the appellant has availed ITC of the previous period during the period as shown in the table in foregoing paras which is well within the stipulated time period as per the above provision, therefore eligible for the same, except for the period April-June-2019 wherein ITC availed is for the invoices issued for the month/s July-19, Feb-20 & March-2020, as mentioned in the impugned order, which shows subsequent period of invoices, is not eligible to be allowed as per the provisions ibid.

6.9 In view of the above observations, I am of the view that ITC of previous period to the above extent is admissible for calculation of refund filed by the appellant. Thus the appeal filed by the appellant to this extent is allowed and the impugned order passed by the adjudicating authority to this extent is set aside.

6.10 As regards to contention of the appellant regarding (ii) issue of the value of Zero rated supply (value of goods exported) was considered as FOB value instead of the CIF value (it is to be noted that the formula was also incorrectly considered), I refer relevant provisions of the CGST Act-2017, CGST Rules-2017 and clarification issued by CBIC vide Circular No.147/03/2021-GST dated 12.03.2021.

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

³[(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula -

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Where, -

(A) "Refund amount" means the maximum refund that is admissible;

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

⁴[(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;]

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

⁵[(E) "Adjusted Total Turnover" means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.]

(F) "Relevant period" means the period for which the claim has been filed.

¹¹[Explanation.-For the purposes of this sub-rule, 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 of bill of supply whichever is less]

3. Substituted (w.e.f. 23.10.2017) by Notification No. 75/2017-C.T., dated 29.12.2017 for

4. Substituted vide Notification No. 16/2020-CT dated 23.03.2020 for

5. Substituted (w.e.f. 04.09.2018) vide Notification No. 39/2018-CT dated 04.09.2018 for:

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

Further, the term "Turnover in a state or a union Territory" has been defined vide Section 2(112) of the CGST Act, 2017 which is reproduced here under:

"(112) "turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said

taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess;"

6.11 Further, I refer para 4.5 of CBIC Circular No.147/03/2021-GST dated 12.03.2021 wherein, it has been clarified that *"the same value of zero rated/export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods" need to be taken into consideration while calculating "turnover in a state or a union territory" and accordingly in "adjusted total turnover" for the purpose of sub-rule (4) of Rule-89"*.

6.12 From the explanation inserted vide Notification No.14/2022-CT dated 05.07.2022, it is clear that for the purpose of sub-rule (4) of Rule 89, the value of goods exported out of India shall be taken as lower of Free on Board Value or Invoice value and is applicable for the entire sub-rule. I observe that the adjudicating authority has taken value of zero rated supply as per FOB value which is lowest of the two i.e. FOB value declared in shipping Bill and value declared in tax invoice.

6.13 The appellant in their additional submissions has submitted that they are okay if the refund is restricted to FOB value of the goods exported, the said value has to be considered in the numerator as well as the denominator while calculating the refund eligibility.

In view of the above, I am of the view that the value of adjusted turnover and Total Turnover, both should be taken for the purpose of calculating the refund in the present case, as per the above explanation to Rule 89(4) of the CGST Rules, 2017 inserted vide Notification No.14/2022-CT dated 05.07.2022 and the clarification issued vide the Circular ibid.

6.15 Accordingly, the impugned order with regard to value of "zero rated supply turnover" taken on the basis of FOB Value which is less than the value declared in tax invoice of bill of supply, is rightly taken by the adjudicating authority. However, the same value should be taken into consideration while calculating "turnover in a state or a union territory" and accordingly in "adjusted total turnover" for the purpose of sub-rule (4) of Rule-89" as clarified above.

6.16 As regards to the issue (iii) ITC pertaining to certain vendor/procurement invoices which were not reflected in GSTR2-A, as a result the ITC of these invoices considered as not eligible for the purpose of refund calculation by the adjudicating authority, has been accepted by the appellant, therefore I am not discussing this issue further.

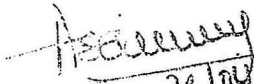
7. In view of above discussions, the impugned order passed by the adjudicating authority with regard to:

(i) ITC of previous period not allowed for calculation of refund filed by the appellant is set aside for being not legal and proper; and

(ii) the impugned order with regard to value of "zero rated supply turnover" taken in Order-in-Original on the basis of FOB Value as explained above, is upheld. However, the same value should also be taken into consideration while calculating "adjusted total turnover" as explained above. Accordingly, the impugned order is modified to this extent and the appeals filed by the "Appellant" are allowed to the extent, as above.

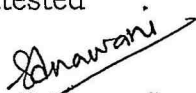
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

8. The appeals filed by the appellant stand disposed of in above terms.


28/04/2024
(ADESH KUMAR JAIN)
JOINT COMMISSIONER(APEALS)
CGST & C.EX., AHMEDABAD.

Date: .04.2024.

Attested


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

By R.P.A.D.

To:

M/s Otsuka Pharmaceuticals India Private Limited,
Plot No. 199, 200, 201, 206 TO 210, VILLAGE VASNA,
CHACHARWADI, Sanand, Changodar GIDC, Ahmedabad,
Gujarat, 382213 (GSTIN 24AAFCC0602G1ZD)

Copy to:

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



