
	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
☎ 079-26305065		☎ 079-26305136

रजिस्टर डाक ए.डी. द्वारा

क फाइल संख्या (File No.): V2(STC)30 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 402-17-18

दिनांक (Date): 27-Mar-2018 जारी करने की तारीख (Date of issue): 16/4/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-II), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No SD-02/Ref-67/VIP/2017-2018 Dated: 21/06/2017

issued by: Assistant Commissioner Central Excise (Div-II), Ahmedabad North

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Intas Pharmaceuticals Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person an aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

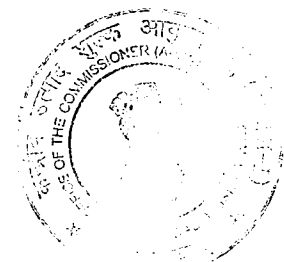
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



Cont...2

- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

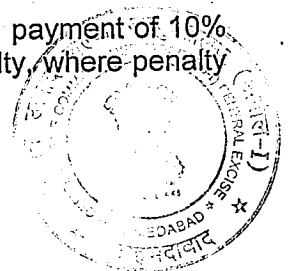
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

M/s. Intas Pharmaceuticals Limited, 2nd floor, Chinubhai Centre, Off Nehru Bridge, Ashram Road, Ahmedabad-380009 (hereinafter referred to as appellant), against Order-in-Original No. SD-02/REF-67/VIP/2017-18 dated 21.06.2017 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner of Service Tax, Division-II, Ahmedabad-380015 (hereinafter referred to as 'adjudicating authority').

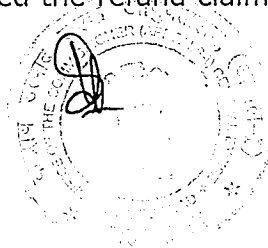
2. The appellant is engaged in providing Renting of Immovable Property Service and Management Consultancy Service. The appellant is registered with the Service Tax department having Service Tax Registration No. AAAC15120LST001. The appellant has filed a refund claim amounting to Rs. 6,63,985/- before the office of the Assistant Commissioner, Service Tax, Division-II, Ahmedabad on the ground that they have wrongly paid service tax which was not required to pay them. The details of the wrongly paid service tax are as under.

2.1 M/s Akshar Consultant had provided service of "Consulting Engineer's Service" to the appellant vide invoice nò. 109 dated 25.03.2017 and the Service tax had already been charged under forward charged mechanism by the service provider. However, the appellant had paid the said service tax inadvertently vide challan No. 00053470205201602525 dated 02.05.2016 under reverse charge mechanism considering "Legal Consultancy Service".

2.2 Further, M/s Galaxy Travels had provided service of "Air travel Agency" to the appellant during the period and they had paid the said service tax inadvertently under reverse charge mechanism considering "Rent-a-Cab Service".

2.3 Furthermore, they had received an import service in the month of Feb-2016 from M/s SUED & FARGESA SRL and paid the service tax vide Challan number 00053473103201670443 dated 31.03.2016 under reverse charge mechanism considering "Business Auxilliary Service". At the time of Service tax payment accounting voucher had not been done and created in the next month i.e. March, 2016. They had again paid service tax vide challan number 0005347050303201627762 dated 05.03.2016 which was already paid by them in the month of February, 2016.

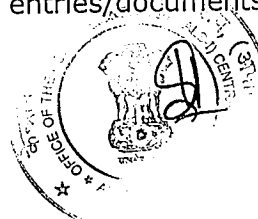
3. On scrutiny of the refund claim, the department noticed some discrepancies in their refund claim and a show cause notice was issued to the appellant. The show cause notice was adjudicated vide the above mentioned impugned order wherein the adjudicating authority rejected the refund claim mainly on the following grounds:



- a) In respect of Import of service- The amount of Service tax payment, document number and posting date for both the payments are not same, hence it can be ascertained that both the payments under RCM are totally different and not the same. Hence, refund of Rs. 11,588/- is not admissible.
- b) It can't be ascertained that they have not availed CENVAT Credit of the service tax amount paid by them under RCM i.e. Rs. 6,63,985/- for which they are claiming refund. Further, it was found that they have not submitted any documents, evidence on basis of which it can be ascertained that they have not taken Cenvat Credit of the service tax amount paid on the said services.

4. Feeling aggrieved, the appellant has filed this appeal against the rejection of the refund claim, on the grounds *which are inter alia mentioned* that:

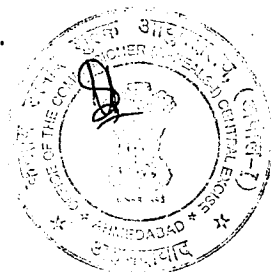
- a) In respect of refund claim of Rs. 6,46,006/- (Rent-a-Cab Services)- Vide Notification No. 3/2011-CE(N.T.) dated 01.03.2011, Rent-a-Cab Service has been excluded from the definition of 'Input Service' w.e.f 01.04.2011. Therefore, the appellant is not entitled to avail CENVAT Credit in respect of services, rendered by Rent-a-Cab Operators. Therefore, there is no question of availing the same.
- b) In respect of refund claim of Rs. 11,588/- (Business Auxiliary Services)-
 - i. The appellant has paid service tax twice on the same invoice, for import of service, from M/s SUED & FARGESA SRL - once, at the time of booking of invoice and second time, at the time of making payment to the said Service Provider. CENVAT Credit was not availed for the first payment of service tax i.e. Rs. 11,898/- and availed CENVAT Credit for the second payment of service tax i.e. Rs. 11,588/-.
 - ii. The reasons for difference in the amount of Service tax paid, Document Number and Posting date are as follows- the difference in amount of Service tax is due to different Foreign Exchange Rates on the different dates, the first payment date was the time of booking of invoice and the second payment date was the payment date to the said Service Provider. Since both the payments/events happened on different dates, two separate Entries were passed as per accounting norms i.e. (i) for booking invoice and (ii) for making payment to service provider. As two separate entries have been passed on different dates, two separate documents numbers were generated with different posting dates. Thus, both the above entries/documents are for one and the same transaction.



- c) In respect of refund claim of Rs. 6,391/- (Consulting Engineers' Services)- M/s Akshar Consultant had provided "Consulting Engineer's Service" vide invoice no. 109 dated 25.03.2017 and the Service tax of Rs. 5583/- had already been discharged under forward charge mechanism by the service provider. However, the appellant had paid service tax of Rs. 6,391/- inadvertently on the said invoice (amounting to Rs. 44,083/-) under reverse charge mechanism considering "Legal Consultancy Service", vide challan No. 00053470205201602525 dated 02.05.2016. The presumption of the adjudicating authority that the appellant might have availed CENVAT Credit of Service tax, is baseless and not corroborated by the adjudicating authority by means of entry no. and date of Cenvat credit register.
- d) The appellant is eligible for refund of Rs. 6,63,985/-, which was not required to be paid by them and the same has been verified from the work sheet which was submitted by the appellant (Para 5, 6 & 7 of the impugned order).
- e) The appellant has submitted C.A. Certificate dated 20.02.2017 issued by Shri Tehmul B. Sethna, Chartered Accountant, wherein it was certified that Service tax amount of Rs. 6,63,985/- paid by the appellant, has been paid in excess and they have shown this amount paid in excess, as receivable, in their books of accounts and the said amount has not been recovered from any person. Also the appellant has not availed CENVAT Credit of the aforesaid amount. In view of this 'Unjust Enrichment' is not applicable.
- f) The adjudicating authority has not considered any of the submissions made by the appellant vide letter dated 21.06.2017.
- g) The impugned order is liable to be set aside, being not sustainable.

5. Personal hearing in the matter was held on 31.01.2018 wherein Miss Madhu Jain, Advocate, appeared on behalf of the appellant and reiterated the contents of appeal memorandum. She also submitted a copy of Chartered Accountant Certificate of dated 20.02.2017.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and additional submission made by the appellant at the time of personal hearing. I find that issue to be decided is whether the appellant is eligible for refund or otherwise.



7. In the present case, I find that the appellant had filed the claim of refund on the ground that they had wrongly paid service tax which was not required to be paid by them. In view of the above, I would like to reproduce the relevant paras of Section 11B of the Central Excise Act, 1944 (as made applicable in the case of Service Tax matter vide Section 83 of the Finance Act, 1944) for proper clarity;

"Section 11B. Claim for refund of duty and interest, if any, paid on such duty -

(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and **the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :**

.....
.....

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

.....
....."

[Emphasis supplied]

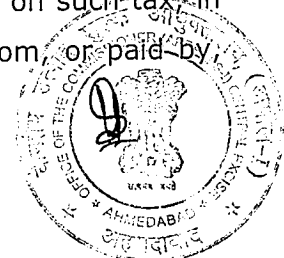
8. On examining the refund claims in this backdrop I find that -

(a) The appellant has filed the refund claims under Section 11B of the Central Excise Act, 1944 as made applicable in the case of Service Tax matter vide Section 83 of the Finance Act, 1944;

(b) The appellant has filed the refund claim within the stipulated time limit prescribed under Section 11B of Central Excise Act, 1944.

(c) The appellant has filed the refund claim on the ground that they had wrongly paid service tax which was not required to be paid by them;

(d) Sec.11B of the Central Excise Act provides that refund application may be made in such form and in such manner as may be prescribed and accompanied by documentary evidence as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax, in relation to which such refund is claimed was collected from, or paid by,



him and the incidence of such duty and interest, if any paid on such duty had not been passed on by him to any other person;

(e) The adjudicating authority has rejected the refund claims on the following ground (para 12 of the impugned order) - It can't be ascertained that they have not availed CENVAT Credit of the service tax amount paid by them under RCM i.e. Rs. 6,63,985/- for which they are claiming refund. Further, it was found that they have not submitted any documents, evidence on basis of which it can be ascertained that they have not taken Cenvat Credit of the service tax amount paid on the said services

(f) The appellant had submitted C.A. Certificate dated 20.02.2017 issued by Shri Tehmul B. Sethna, Chartered Accountant, wherein it was certified that- (i) The amounts of Service tax (i.e. Rs. 6,63,985/-) paid by Intas Pharmaceuticals Ltd. Has been paid in excess and they have shown this amount paid in excess as receivables in their books of accounts and that the said amount has not been recovered from any person; (ii) Intas Pharmaceuticals Ltd. has not availed CENVAT Credit of the aforesaid amount. Scanned copy of the C.A. Certificate dated 20.02.2017 is reproduced below:

Members:
Tehmul B. Sethna
I. Com., I.C.A.
Jyoti M. Malhotra
I. Com., A.C.A.
Shirag R. Ganatra
I. Com., A.C.A.

Apaji Amin & Co LLP
CHARTERED ACCOUNTANTS

Phone No.: +91-79-26562132/33 Email: auditors.apajiamin@gmail.com

Regd. Office: 304,
Akhosha Building,
Opp. Vadital House,
Navrangpura,
Ahmedabad-380009

TO WHOMSOEVER IT MAY CONCERN

Intas Pharmaceuticals Ltd., having their registered office at 2nd Floor, Chinubhai Centre, Off Nehru Bridge, Ashram Road, Ahmedabad - 380009, have filed a claim for refund of service tax of Rs. 6,63,985/- with the office of the Asst. Commissioner of Service Tax, Division - II, APM Mall, Anand Nagar Road, Satellite, Ahmedabad, claiming it as paid in excess.

With regards to above, we hereby certify that:

- 1) The following amounts of Service Tax paid by Intas Pharmaceuticals Ltd. has been paid in excess and they have shown this amount paid in excess as receivables in their books of accounts and that the said amount has not been recovered from any person;

Challan Number	Challan Dt	Challan Amt	Excess Payment / Refund Claim Value	Category - Wrong	Category - Correct	Remarks
0005347 0205201 6 02525	02-05-16	43,723	6,391	Legal Consultant Services	Consulting Eng Services	For service of consulting engs., provider is liable and hence charged service tax in invoice and paid. Due to over site paid under RCM under Manpower supply agency.
0005347 0205201 6 02532	02-05-16	1,041,018	180,965	Rent - a - Cab Services	Air Travel Agent's Services	For service of Air Travel agent, provider is liable for payment of service tax. Due to over site paid under RCM under Rent A Cab Service.
0005347 0606201 6 09972	06-06-16	1,404,220	462,559			
0005347 1205201 6 01054	12-05-16	32,442	2,482			
0005347 3103201 6 70443	31-03-16	176,660	11,588		BAS	Already Paid in the month of Feb-2016, due to over site again paid in Mar 2016
Total Claim/Refund Value			663,985			



partners:
Tehmul B. Sethna
 B. Com., F.C.A.
Rity M. Malhotra
 M. Com., A.C.A.
Chirag R. Gnantra
 B. Com., A.C.A.

Apaji Amin & Co LLP

CHARTERED ACCOUNTANTS

Phone No.: +91-79-26562132/33 Email: auditors.apajiamin@gmail.com

Regd. Office: 304,
 Askansa Building,
 Opp. Vadilal House,
 Navrangpura,
 Ahmedabad-380009

2) Intas Pharmaceuticals Ltd. has not availed CENVAT Credit of the aforesaid amount.

The certificate is issued upon the request of the company and on the basis of information and ledgers given to us.

Place: Ahmedabad
 Date: February 20, 2017



For Apaji Amin & Co LLP
 Chartered Accountants
 FRN No.: 100513W/W100062

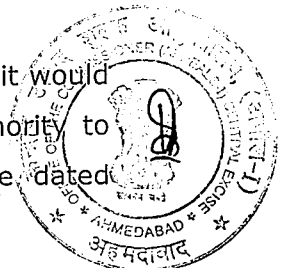
Tehmul B Sethna
 Tehmul B Sethna
 Partner
 Membership No. 035476

(g) The adjudicating authority in para 9 of the impugned order has found that unjust enrichment of Section 11-B of Central Excise Act, 1944 is not applicable in this case and the appellant is entitled for refund of Rs. 6,63,985/-.

(h) The adjudicating authority has also verified the work sheet submitted by the appellant and found that the appellant is eligible for the refund (para 5, 6 & 7 of the impugned order).

(i) The adjudicating authority has passed the order without going in depth of the documents submitted by the appellant. Even he has not mentioned in his order about which additional documents/evidences he had required to verify the refund claim. It is also not evident that whether the adjudicating authority had demanded any documents/evidences from the appellant in written. If he had any doubt in respect of availment of CENVAT Credit, he could demand the requisite documents/evidences from the appellant and verify the same. But, the adjudicating authority has presumed that the appellant might have availed CENVAT Credit and rejected the claim on the basis of his imagination. Even, the adjudicating authority has not commented anything on the C.A. certificate wherein it is clearly mentioned that the appellant has not availed CENVAT Credit of the aforesaid amount.

9. Thus, in view of the above findings and in the fitness of things, it would be just and proper to remand the matter to the Adjudicating Authority to decide afresh, after considering and verifying the C.A. Certificate, dated



20.02.2017 and other submissions of the appellant. The appellant is also directed to put all the essential documents and evidences before the Adjudicating Authority in support of their contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings before the Adjudicating Authority.

10. In view of the foregoing the aforementioned appeal is disposed of by remanding the matter back to the adjudicating authority in terms of the discussion held above.

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

11. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)
आयुक्त (अपील्स)

Attested

Vineed Lukose
(Vineed Lukose)
Superintendent (Appeals)
Central Tax, Ahmedabad

BY SPEED POST TO:

M/s. Intas Pharmaceuticals Limited,
2nd floor, Chinubhai Centre,
Off Nehru Bridge,
Ashram Road, Ahmedabad.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone.
2. The Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Deputy/Assistant Commissioner, Central Tax, Division VI, Ahmedabad South *North*
4. The Additional Commissioner, System, Central Tax, Ahmedabad South *North* Commissionerate.
5. Guard File.
6. P.A.

