



आयुक्त का कार्यालय, (अपीलस)  
Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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क फाइल संख्या : File No : **V2(ST)123 /North/Appeals/2018-19** **7672 7676**

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-120-18-19**

दिनांक Date : **20-Nov-18** जारी करने की तारीख Date of Issue **18/12/2018**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No **Div-VII/North/100-A/Refund/Torrent/17-18**  
Dated **18-Jun-18** Issued by **Deputy Commissioner** , Central GST , Div-VII ,  
Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता  
Name & Address of The Appellants

**M/s Torrent Pharmaceuticals**

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-

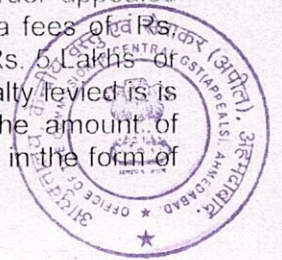
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हॉस्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी.- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायापीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees. in the form of



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियों (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा अधीक्षक केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50 /- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ 'आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

4(1) 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. Torrent Pharmaceuticals Ltd., Ashram Road, Ahmedabad (henceforth, "appellant") has filed the present appeal against the Order-in-original No.Div-VII/North/100-A/Refund/Torrent/17-18 dated 18.06.2018 (henceforth, "impugned order") issued by the Deputy Commissioner, Central Tax, Division-VII, Ahmedabad-North (henceforth, "adjudicating authority").

2. The facts of the case, in brief, are that the appellant, a manufacturer of pharmaceutical products filed a refund claim on 08.03.2018 under Section 142(9)(b) of Central Goods and Service tax Act, 2017 for Rs.43,76,581/- in respect of CENVAT credit of service tax available to them against service received from abroad wherein service tax was paid by them under reverse charge mechanism. Said refund claim was filed on the ground that subsequent to filling of returns i.e. ST-3 on 14.08.2018 (which also stands revised on 26.09.2017), they paid service tax under RCM which was available as Cenvat credit. The claim was rejected under impugned order mainly stating that the appellant has contravened the provisions of rule 4(7) of Cenvat Credit Rules, 2004 by availing Cenvat credit well in advance before the payment of service tax to the Government account.

3. Being aggrieved with the impugned order the appellant preferred this appeal contesting *inter alia*, that no show cause notice or personal hearing was given and hence principle of natural justice has not been followed; that they are entitled for refund in term of Section 142(9)(b) of Central Goods and Service tax Act, 2017; that ST-3 return is revised within prescribed time limit in the existing law; that Cenvat credit of service tax paid under RCM is available; that the words 'period for which return is revised' are not existing in section 142(9)(b) CGST Act, 2017 which has been read additionally by the adjudicating authority; that scheme of transitional credit has been ignored by the adjudicating authority, generally Cenvat credit is transferred from return and in the situations where it was not possible to transfer admissible credit through return, government has provided availment of Cenvat credit in TRAN-1; that reliance placed on rule 4(7) of Cenvat Credit Rules, 2004 for denying cash refund is not sustainable as admissibility of credit is governed by rule 3 of said Rules; that in the instant case cash refund is available under



Section 142(3) and there is no provision for re-credit of Cenvat; that substantive right of input tax credit cannot be curtailed due to change in indirect tax regime. Etc.,

4. In the Personal hearing held on 24.10.2015 Ms. Madhu Jain, advocate, reiterated the grounds of appeal and explained that after holding refund admissible in para 5, sub para 3&4 and on non applicability of unjust enrichment at para 6 of the Order-in-original, the adjudicating authority finally rejected the refund in para 7.

5. I have carefully gone through the appeal memorandum. The issue requiring determination in the case is whether in term of Section 142(9)(b) of Central Goods and Service tax Act, 2017 the appellant is entitled for refund of service tax paid by them under RCM for the services received from abroad, the claim of which was preferred on account of revision of ST-3 returns after the appointed day. I find that the adjudicating authority, after offering his ruling on the aspects of applicability of section 142(9)(b) CGST Act, 2017 and unjust enrichment in favour of admission of refund, concluded in rejection of the refund based on the observations provided to him by pre-audit clearance authority. The lower authority empowered to decide such important matters of refund to the claimant has to dealt with the issue in an unambiguous vision and take decision in accordance with the statute made for it. Since the decision taken by him ultimately affects the revenue, there cannot be place to such differing views. The findings/observations made by such authorities are instrumental in justifying that decision taken was logical and legally sustainable. The findings in the instant case starts with allowing refund and conclude with rejection thereof. Such contradiction in finding is not a sign of generally followed norms of adjudication and would have been avoided. I find that M/s Heumann Pharma, GmbH, Germany raised invoice on 31.03.2017 against the services provided by them and therefore service tax liability against it was required to be discharged by the appellant under reverse charge mechanism in March 2017 which the appellant failed. If it was paid in March 17, credit would have been taken in that month only. Presuming that the invoice was received in April 2017, the service tax liability would have been discharged before due date of payment i.e. 6<sup>th</sup> May 2017 by the appellant. In any case, it cannot be presumed that the appellant was not aware of his tax liability in respect of the invoice in question for such a long period including the appointed day too.



that the appellant paid tax in 26.09.2017 i.e. late by more than four month which includes the period when announcements on roll out of GST was given wide publicity.

6. I find that the entire issue arose on account of non discharging of service tax liability within prescribed period and non carried forward of Cenvat credit under GST regime. It was made mandatory under rule 117(1) of CGST Rules, 2017 for all assessee to submit a declaration electronically in Form GST TRAN-1 for carried forward of Cenvat credit under GST regime. I find that in order to rectify the Cenvat credit amount availed, the appellant has revised the ST-3 return on 26.09.2017 incorporating additional Cenvat credit Rs.43,76,581/- under the column 'credit taken'. However, there appears a mistake in showing correct closing balance as it was not enhanced with said amount. Closing balance of Cenvat credit shown Rs.39/- only, should have been Rs.43,76,620/- after revision of return. If correct closing balance was shown, the appellant would have filled TRAN-1 claiming Cenvat credit incorporating of Rs.43,76,620/-. The claim has been preferred as an alternative to correction of closing balance in ST-3 return. Thus, the refund claim seems to be more in the nature of refund of Cenvat credit rather than correcting the closing balance of the same under ST-3 return. Further, it is not coming out from record, on what date TRAN-1 was filled and how the Cenvat credit which already shown as availed under the revised return, not reflected in it. Further, on perusal of Part-D of original as well as revised the ST-3 returns in question, the appellant has shown total cash payment of service tax Rs.6,41,71,653/- in both the returns. Payment of Rs.43,76,581/- was made on 22.09.2017, how is it possible that said payment reflected in both the returns ? It appears to be a case showing cash payment amount in ST-3 return higher than corresponding challans shown therein. Further, If return is revised on account of cash payment of tax Rs.43,76,581/- against import of service, it should reflect in part-D of revised return. Since, both the return shows same amount of cash paid, it is not forthcoming whether refund arose on account of revise return or not ?

7. It is contested by the appellant that the words 'period for which return is revised' are not existing in section 142(9)(b) CGST Act,2017, however the same has been read additionally by the adjudicating authority. In this regard I find that the claim has been rejected by the adjudication authority based on the provisions of rule 4(7) of Cenvat



Credit Rules, 2004 which speaks on admissibility of credit **after** payment of tax in respect of input service used in providing output service. This provision imposes restriction on availment of credit prior to payment of tax involved. In the instant case, so far the credit has been shown in the return for April to June 2017, it can be very well said that the same is availed during that period which was available on or after the date of payment i.e. 22.09.2017 only. The finding of the adjudication authority nowhere says that credit is not admissible at all. The finding is on availment of credit in contravention of rule 4(7) of Cenvat Credit Rules, 2004 and non-admissibility of refund under Section 142(9)(b) of CGST Act, 2017 read with 11B of Central Excise Act, 1944 and hence do not suffer any ambiguity. It is made clear that as per the Cenvat Credit Rules, 2004, the credit in question is admissible to the appellant and can be availed and utilized after the date of payment of tax involved therein.

8. It is further contested that generally Cenvat credit is transferred from return and in the situations where it was not possible to transfer admissible credit through return, government has provided availment of Cenvat credit in TRAN-1. In this regard I find that in order to allow the Cenvat credit which was lying unutilized on the appointed day, it was made mandatory under rule 117(1) of CGST Rules, 2017 for all assessee to submit a declaration electronically in Form GST TRAN-1 for carried forward of Cenvat credit under GST regime. Since, the appellant was well aware of said mechanism, they should have had properly used it. I also find force in the observation under impugned order at para 7 that the provisions of Section 142(9)(b) of CGST Act, 2017 talks about the return under the existing law already furnished before the appointed day i.e. 01.07.2017 whereas the in the present case original as well as revised returns, both have been filed after the appointed day. I find that said provision i.e. 'return furnished under the existing law, is revised after the appointed day' stresses on the **return which was furnished** before the appointed day and got revised due to any reason. In view of this, since the original return itself is filed on 14.08.2017 that is after the appointed day, the case does not fit with the intention of the provision supra. With reference to the plea that the scheme of transitional credit has been ignored by the adjudicating authority, I find that it was made mandatory under rule 117(1) of CGST Rules, 2017 for all assessee to submit within ninety days of appointed, a declaration electronically in Form GST TRAN-1 for carried forward



Cenvat credit under GST regime which the appellant appears to have failed using.

9. Now, coming to the issue of principles of principle of natural justice, it has been contested by the appellant that no show cause notice as well as opportunity of personal hearing was granted to them before passing the order rejecting the refund claim and hence principles of natural justice have been violated. I find that the claim was rejected without awarding the appellants the opportunity of being heard. As regards the issue that the appellants were not given any opportunity to present their case personally as per the principle of natural justice; I consider that the adjudication proceedings shall be conducted by observing principles of natural justice. Order passed in violation of the principles of natural justice is liable to be set aside by Appellate Authority. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. The Show Cause Notice is the first limb of this principle. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. The Hon'ble Supreme Court has further elaborated the legal position in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], as under: -

*" If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and*



*mere pretence of compliance with it would not satisfy the requirement of law."*

9.1 The adjudicating authority should, therefore, bear in mind that no material should be relied in the adjudication order to support a finding against the interests of the party unless the party has been given an opportunity to rebut that material. Further, the Section 142(6)(a) of Central Goods and Service tax Act,2017 which deals with the appeals in respect of claim for CENVAT credit is reproduced below:

(6) (a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be **disposed of in accordance with the provisions of existing law**, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

9.2 Since the present appeal pertains to claim for CENVAT credit, it needs to be disposed of in accordance with the provisions of existing law which also allows remanding the matter back to the adjudicating authority. In view of said provisions as well as for the above mentioned observations in respect of principles of natural justice, I remand the case back to the adjudicating authority for passing a fresh order in term of the provisions of Section 142(9)(b) of Central Goods and Service tax Act,2017 read with Section 11B of Central Excise Act, 1944 ensuring principle of natural justice.

10. 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.

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील)

Date:

Attested

(D.A. Panjari)  
Superintendent  
Central Tax (Appeals)





By R.P.A.D.

To,

M/s. Torrent Pharmaceuticals Ltd.,

Torrent House, Off: Ashram Road, Ahmedabad-380009.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad- North.
4. The Asstt./Deputy Commissioner, CGST Division-VII, Ahmedabad - North.
5.  Guard File.
6. P.A. File

