



सत्यमेव जयते

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

☎ : 079-26305065

☎ : 079 - 26305136



By speed Post

क फाइल संख्या : File No : V2(GST)15&16/EA2/North/Appeals/2018-19 / 10413 to 10417

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-002-APP-207&208-18-19

दिनांक Date : 07/03/2019 जारी करने की तारीख Date of Issue: 8/5/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनांक : से सृजित

Arising out of Order-in-Original: Div-VII/GST-Refund/06/final/Torrent/2018& Div-VII/GST-Refund/05/final/Torrent/2018, Date: 07/03/2018 Issued by: Assistant Commissioner, CGST, Div: VII, Ahmedabad North.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Torrent Pharmaceuticals limited

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

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



ध 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- षोबी/35-इ के अंतर्गत:-

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

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 दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 इ.ए-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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां 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

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 Appellant 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 अनुसूचि-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 bear 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 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।

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.

(6)(i) 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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



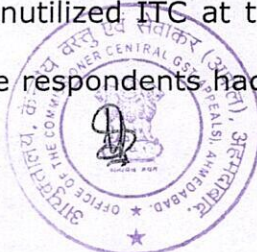
ORDER IN APPEAL

The Assistant Commissioner, Central G.S.T., Division-VII, Ahmedabad-North Commissionerate (*hereinafter referred to as 'appellant'*) has filed two appeals against the following Orders-in-Original mentioned below (*hereinafter referred to as 'impugned orders'*) passed in the matter of refund claim filed by M/s. Torrent Pharmaceuticals Ltd., Torrent House, Off Ashram Road, Ahmedabad (*hereinafter referred to as 'respondents'*).

Sr. No.	OIO No.	OIO date	Amount of refund sanctioned (₹)
1	Div-VII/GST-Refund/06/final/Torrent/2018	07.03.2018	78,04,672
2	Div-VII/GST-Refund/05/final/Torrent/2018	07.03.2018	25,85,947

2. The facts of the case, in brief, are that the respondents are registered with the Central Goods & Service Tax department having GSTIN number 24AAACT5456A1ZR and had filed refund claims of ₹7,80,46,724/- (IGST ₹ 6,32,11,620/- + CGST ₹ 74,17,552/- + SGST ₹ 74,17,552/-) and ₹ 2,58,59,476/- (IGST ₹ 6,32,11,620/- + CGST ₹ 27,74,011/- + SGST ₹ 27,74,011/-) respectively on account of ITC accumulated due to zero rated supply of goods. The adjudicating authority, vide the impugned orders mentioned above, sanctioned the refunds of accumulated ITC on export without payment of duty.

3. The impugned orders were reviewed by the Commissioner of Central Goods & Service Tax and Central Excise, Ahmedabad-North and issued Review Orders number 25/2018-19 and 26/2018-19 respectively, both dated 24.10.2018, for filing an appeal under section 107(2) of the CGST Act, 2017 on the ground that the Deputy Commissioner, Audit Cell, CGST & C.Ex., Ahmedabad-North had observed that there was no sufficient balance available in respect of IGST, CGST and SGST for the relevant months i.e. July 2017 and August 2017. The appellant claimed that according to the provisions as mentioned under Section 54(3) of the CGST Act, 2017, a registered person may claim refund of unutilized ITC at the end of any tax period. However, it was observed that the respondents had utilized nearly all



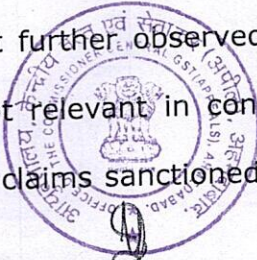
the credit available to them. It was further observed by the appellant that the balance of electronic credit, of the respondents, reflecting in RFD-01 is not proper.

4. Personal hearing in the case was granted to the respondent on 13.12.2018 and Shri Jigar Shah and Smt. Madhu Jain, Advocates, and Shri Akash Agarwal, AGM Taxation representing the respondents, appeared before me. The advocates showed me the provisions of refund and explained the case. They further made additional written submission.

5. I have carefully gone through the facts of the case on records and grounds of appeal in the Appeal Memorandums. On going through the appeal memorandum, I find that the appellant has alleged that the adjudicating authority has not examined the point raised by the Deputy Commissioner, Audit Cell, and wrongly sanctioned the refund claims. The appellant alleged that there was no sufficient balance available with the respondents in respect of IGST, CGST and SGST for the relevant months i.e. July 2017 and August 2017. In this regard, as per rule, a registered person is eligible for refund of unutilized ITC at the end of any tax period. I find that the respondents had filed the refund claim on account of ITC accumulated due to zero rated supply of goods and the maximum amount of refund claim was calculated as per the below men formula, given in Rule 89 of the CGST Act, 2017;

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

However, when the claim was sent for post-audit verification, the Assistant Commissioner, Audit observed that the respondents had filed a refund claims of ₹2,58,59,476/- and ₹7,80,46,724/- for the months of July and August 2017 whereas, they had no unutilized input in the month of July 2017 and had a balance of only ₹5,02,06,514/- in the month of August 2017. The Assistant Commissioner, Audit further observed that the compliance of the adjudicating authority was not relevant in context of the provisions under Section 54(3) and hence, the claims sanctioned were not proper (paragraph



3 of the review order filed by the appellant). Thus, I find that the respondents had less balance of ITC as against the refunds claimed. In their counter argument, **the respondents have misquoted the contents mentioned in paragraph 4.1 of the Circular number 37/11/2018-GST dated 15.03.2018**, stating that substantive benefits of zero rating may not be denied where it has been established that exports have been made. However, the respondents have failed to discuss the next sentence of the said paragraph which states that the delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case. **Thus, it only means, procedural lapses may be condoned like the delay in furnishing of LUT etc.** However, the basic conditions, on the ground of which an ITC refund is to be sanctioned, have to be strictly adhered to. The second counter of the respondents is more grotesque viz.; *"..... thus non availability of ITC at the end of any month (relevant period) is of no consequence as long as unutilized ITC is available at the time of filing refund application"*. This bizarre act of deciphering the Section 54 of CGST as per their own benefit is not only laughable but juvenile too. The section is very clear about the facts about the refund and it states that a registered person may claim refund of any unutilized ITC at the end of any tax period and any tax period does not mean the time of filing refund. The respondents have tried to create confusion by arguing that 'tax period' and 'relevant period' are two different entities. They claimed that the months July and August 2017 are only relevant periods and not tax periods. Whereas, actually, as per definition provided in the CGST manual, the term 'Tax Period' is defined as "the period for which the return is required to be furnished". Thus, it is very much clear that the 'tax period' only means the 'relevant period' and nothing else.

6. Therefore, as per the discussion held above, the appeals filed by the Department is allowed and as proposed, I set aside the impugned orders and direct the proper authority to recover the refund/excess refund granted to the respondents along with interest at appropriate rate.



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

उमा शंकर
(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED

S. Dutta
(S. DUTTA) 07/05/19

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.



To,
M/s. Torrent Pharmaceuticals Ltd.,
Torrent House, Off Ashram Road,
Ahmedabad

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad-North.
- 3) The Dy./Asst. Commissioner, Central Tax, Div-VII, Ahmedabad-North.
- 4) The Asst. Commissioner (System), Central Tax, Ahmedabad-North.
- 5) Guard File.
- 6) P.A. File.

