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 **टेलेफैक्स** : 079 - 26305136

क फाइल संख्या : File No : **V2(ST)120 /North/Appeals/2018-19** 6736 to 6740

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-EXCUS-002-APP-65-18-19**

दिनाँक Date : **11-Sep-18** जारी करने की तारीख Date of Issue 24/10/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **GST-06/Refund/23/AC/KMM/Intas/2018-19**
Dated **01-Aug-18** Issued by **Assistant Commissioner ,** Central GST , Div-VI , Ahmedabad North.

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

M/s Intas Pharmaceuticals Limited

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 मैन्टल हास्पिटल 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 विरूद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां 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 प्रतियाँ **(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 शर्तो पर अनुसूची–1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 अर्ज़ी एवं अपील को लागू नहीं होगे।**

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. Intas Pharmaceuticals Ltd., Corporate House, Thaltej, Ahmedabad (henceforth, "*appellant*") has filed the present appeal against the Order-in-original No.CGST-06/Refund/23/AC/KMM/Intas/2018-19 dated 01.08.2018 (henceforth, "*impugned order*") issued by the Assistant Commissioner, CGST Division-VI, Ahmedabad-North (henceforth, "*adjudicating authority*").

2. The facts of the case, in brief, are that the appellant, a manufacturer and trader of pharmaceutical products, filed a refund claim Rs.1,24,56,627/- on 23.04.2017 of service tax paid by them on notice pay income received from employee which was rejected vide OIO No. GST-06/Refund/07/AC/KMM/Intas/2017-18 dated 30.10.2017 by the original adjudicating authority. Appeal against said OIO was allowed vide OIA No.AHM-EXCUS-002-APP-396-17-18 dated 22.03.2018, pursuant to which refund of Rs.1,24,56,627/- was sanctioned by the original adjudicating authority under impugned order.

3. Being aggrieved with the impugned order the appellant preferred this appeal contesting inter *alia*, that payment of interest on delayed payment of refund is automatic and no direction from higher authority is required, department is obliged to pay interest; that Section 11BB of Excise Act contemplates suo moto grant of interest; that circular No. 670/61/2002-CX dated 01.10.2002 issues by CBEC stressed payment of interest which is binding on the department; that since the department has unauthorized/unlawfully retained amount of refund, not to pay interest is equally unjust; that Interest on interest is held in case of Sandvik Asia Ltd v/s CIT reported in 2006(196) ELT 257 (SC) etc.,

4. In the Personal hearing held on 05.09.2018 Shri Willingdon Christian, advocate, reiterated the grounds of appeal, stated that interest was not paid and provided copies of citations.

5. I have carefully gone through the appeal memorandum. The limited issue which requires determination in the case is whether the appellant is entitled for interest on refund amount. Section 11BB of the Central Excise Act 1944 deals with interest on delayed refunds which is reproduced below for ease of reference:

"Section 11BB. Interest on delayed refunds. ---

If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :

***Provided** that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty."*

Explanation provided under said section stipulates that;

***"Explanation**. - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, by the court shall be **deemed to be an order** passed under the said sub-section (2) for the purposes of this section."*

6. I find that the issue of interest and its interpretation has already been settled by Hon'ble Apex court in case of Ranbaxy Laboratories Ltd v/s Union of India [2012 (027)ELT 193 SC] and any contrary interpretation is bad in law and not tenable. The original authority should have scrupulously followed this wherein it is held that:

(9) " It is *manifest from the a fore-extracted provisions that Section 11 BB of the Act comes in to play only after an order for refund has been made under Section 11BB of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of an application to be submitted under sub-section (1) of Section 11BB of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of an application. The explanation appearing below the proviso to Section 11BB introduced a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise but by the court shall be deemed to be an order made under sub-section (2) of Section 11BB of the Act. It is clear that the explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act.*

Menifestly, interest under Section 11BB of the Act becomes payable, if on expiry of a period three months from the date of receipt of the application for refund, the amount claimed is still not

refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said section becomes payable on the expiry of a period of three months from the ***date of receipt of the application*** *under sub-section (1) of Section 11B of the Act and that the said explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable."*

7. From the above citation it is clear that interest under Section 11BB ibid becomes payable on the expiry of a period of three months from the date of receipt of the application. Respectfully following the decision of Hon'ble Apex court I hold that the interest should be calculated and paid accordingly.

8. Hon'ble High Court of Gujarat in case of Kamakshi Tradexim (India) Pvt Ltd v/s Union of India reported in 2017 (351) ELT 102(Guj) has categorically stated that department can't take stand contrary to the decision given by the Apex court. The facts of the case on hand are similar to the said cases and categorically applicable.

9. In view of the above, the appeal filed by the appellant is allowed.

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)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested

(D.A.Parmar)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
Intas Pharmaceuticals Ltd.,
Corporate House,Nr. Sola Bridge, SG Highway,
Thaltej, Ahmedabad-380054.

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-VIII, Ahmedabad - North.
5. Guard File.
6. P.A. File