



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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☎: 079 - 26305136

क फाइल संख्या : File No : **V2(ST)16/North/Appeals/2019-20 / 10935 to 10939**
ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-002-APP- 31 -19-20**
दिनांक Date : **27/05/2019** जारी करने की तारीख Date of Issue **04/06/2019**

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/78/AC/AMP/Intas/2018-19**
Dated **07/03/2019** Issued by **Assistant Commissioner** , Central GST , Div-VI ,
Ahmedabad North.

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

M/s Intas Pharmaceuticals Ltd

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 :-

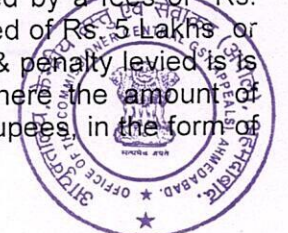
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 विरुद्ध 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 और लगाया गया जुर्माना रूपर 5 लाख या उससे कम है वहाँ रूपर 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहाँ रूपर 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 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 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 (सीस्तेत) 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, 1988 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 अर्ज़ी एवं अपील को लागू नहीं होंगे।

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.

रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065



ORDER IN APPEAL

M/s. Intas Pharmaceuticals Limited, Corporate House, Near Sola Bridge, S.G. Highway, Thaltej, Ahmedabad-380054 (*hereinafter referred to as the 'appellant'*) have filed the present appeals against the Orders-in-Original No. GST-06/Refund/78/AC/AMP/Intas/2018-19 dtd. 07.03.2019 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Division-VI, CGST, Ahmedabad (North) (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellant had filed refund claim for the amount of Rs. 1,57,24,613/- under notification No. 12/2013-ST dated 01.07.2013 for the period of October- 2015 to December- 2015. The refund claim was rejected vide the OIO No. SD-02/REF-240/VJP/2016-17 dtd. 23.12.2016 on the grounds specified therein. The appellant appealed against the said OIO dtd. 23.12.2016 and the Commissioner (appeals) vide his OIA No. AHM-EXCUS-001-APP-214-17-18 dtd. 26.12.2017 remanded to the adjudicating authority for deciding the claim afresh. On remand proceedings, the adjudicating authority has decided the issue vide the impugned order in which the refund claim amounting to Rs. 10,12,271/- was rejected out of the total amount on the grounds that the appellant had failed to provide invoices for the refund claim of Rs. 8,31,751/- and for Rs. 1,80,520/- pertaining to services utilized in unauthorized operations.

3. Being aggrieved, the appellants have filed these appeals against the rejection of the refund claims, on the grounds *which are inter alia mentioned* that:

- a) They do not contest the issue related to the refund amount of Rs. 8,31,751/- minus Rs. 30,335/- (which is a duplication in tabulation related to both – unapproved services and in invoices not submitted) i.e. Rs. 8,01,416/-;
- b) They enclose the list of approved services bearing No. KASEZ/DCO/Z-SEZ/001/2007-08/VOL.1/90 dtd. 15.03.2016 from the Office of Development Commissioner, Kandla SEZ for approval of additional list of taxable services by specified Officer, Ministry of Commerce, Pharmaceutical Special Economic Zone, Matoda and Minutes of the 37th meeting of the approval committee for sector specific pharmaceuticals held on 30.05.2016;
- c) There is no dispute as to consumption of these series in the said SEZ unit of the appellant;



- d) That services provided to a SEZ or a unit in the SEZ is deemed as export as per the provisions of Section 2(m)(ii) of the SEZ Act, 2005 and as per Rule 31 of the SEZ Rules, 2006, the appellants are entitled for exemption from payment of service tax on the services which are provided or used in a unit in the SEZ;
- e) That as per rule 76 of the SEZ Rules, 2006, the 'services' for the purpose of Clause (z) of Section 2 of SEZ Act, 2005 are specified therein and the services provided by them fall under that list;
- f) They seek support from the case laws of Varsed Detective & Security Pvt. Ltd. vs. Commissioner of Central Excise, Jaipur - 2017 (5) GSTL-327 (Tri.- Del.), Makers Mart vs. CCE & ST, Jaipur-II - 2016 (43) STR-309 (Tri.- Del.), Zydus Hospital Oncology Pvt. Ltd. vs. CCE, Ahmedabad - 2013 (30) STR-487 (Tri.- Ahm.);
- g) They are entitled for refund of service tax amounting to Rs. 1,80,520/- on the impugned services though they are not approved by Approval Committee as the said services are consumed in SEZ for authorized operations;
- h) The refund of Rs. 30,335/- is also admissible to them as the three invoices covering the refund amount have been included in both in unapproved services and in invoices not submitted.

4. Personal hearing in the matter was held on 20.05.2019 wherein Shri Kaza Subrahmanyam, Consultant, appeared on behalf of the appellant and reiterated the contents of appeal memorandum. He also submitted that they are not contesting the issue of rejection of refund claim for Rs. 8,31,571/-. He submitted citations of 2013(30) STR-481, 2017 (5) GSTL-327 and 2016 (43) STR-309 in their support.

5. I have carefully perused the documents pertaining to the case and submitted by the appellant along with the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing. I further note that the authorized representative on behalf of the appellant has submitted that they are not contesting the issue of rejection of refund claim for Rs. 8,31,571/- and therefore I do not take up that issue for consideration and the impugned order stands affirmed to that extent.

6. I find that the remaining issue to be decided in the instant case is whether the refund claim amounting to Rs. 1,80,520/- has been rightly rejected on the un-approved services provided by the appellant to a unit situated in SEZ.



7. I find that the appellants have claimed the benefit of exemption contained in the Notification No. 12/2013-ST dtd. 01.07.2013. the relevant part of the notification is produced herein below for ready reference:

*"hereby exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ Unit) or Developer of SEZ (hereinafter referred to as the Developer) **and used for the authorised operation** from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon."* (emphasis provided)

From the above, it is very clear that this notification is applicable to only those services which have been used for the authorised operation and the procedure has been given in the notification as to how to avail the benefit of this notification. On reading this notification, it is evident that the service provider is required to provide a certified list of authorised operations so that the eligibility can be checked. I further find that the Section 26 1 (e) of THE SPECIAL ECONOMIC ZONES ACT, 2005 clearly provides as following:

*"(e) exemption from service tax under Chapter-V of the Finance Act, 1994 on taxable services provided to a Developer or Unit to carry **on the authorised operations** in a Special Economic Zone;"* (emphasis supplied)

While going through the case records, I find that there is not a single finding alleging that the appellant did not use the services in authorized operations and the only dispute is that they failed to provide the list of authorised services. There is a basic difference in authorized operations and authorized services. So I find that it is a procedural lapse only due to which substantive benefit cannot be denied to the appellant. I fully agree with the case law of Zydus Hospira Oncology Pvt. Ltd. vs. CCE, Ahmedabad – 2013 (30) STR-487 (Tri. Ahmd.) in which it has been clearly held that:

*"In the entire records, **I find that there is no dispute as to receipt of these services in the appellant's SEZ unit and consumed in the said unit.** Yet another angle to the case is, if the appellant has directed his service provider, not to charge service tax as being consumed in SEZ unit, the service provider could have done so as per the provisions of SEZ Act. My views are fortified by the division bench of the Tribunal in the case of Tata Consultancy Services Ltd. - 2012-TIOL-1034-CESTAT-MUM = 2013 (29) S.T.R. 393 (Tri.-Mum.). With respect I may reproduce the ratio.*

"6. We have carefully considered the rival submissions.



6.1.....

6.2 Coming to the next question, whether in respect of the services which were wholly consumed and which were fully exempt from payment of duty, whether the appellants can be granted refund under Notification No. 9/2009-S.T., dated 3-3-2009 as amended by Notification No. 15/2009-S.T., dated 20-5-2009 through which amendment a condition was inserted stating that the refund procedure prescribed under the said Notification shall apply only in the case of services used in relation to the authorized operations in the SEZ except for services consumed wholly within the SEZ, This view of the department is also incorrect. Notification No. 9/2009-S.T., exempts the taxable services specified in Clause (105) of Section 65 of the Finance Act. 1994 which are provided in relation to the authorized operations in a SEZ and received by a developer or units of a SEZ, whether or not the said taxable services are provided inside the SEZ, from the whole of the service tax leviable thereon under Section 66 of the Finance Act. 1994. The refund procedure given below for operationalising the exemption applies to services which are procured from outside in respect of which the service tax liability has to be discharged first and the refund claim subsequently. In the case of services which are wholly consumed within the SEZ, there is no necessity to discharge the service tax liability ab initio. That does not mean that in a case where service tax liability has been discharged, the appellant is not eligible or not entitled for refund of the service tax paid under the provisions of Section 118 of the Central Excise Act. 1944 read with Section 83 of the Finance Act. 1994. If the appellant is eligible for refund under Section 118, then the same cannot be denied on the ground that the claim was made under Notification No. 9/2009-S.T. In this case, there is no dispute that the services were provided in relation to the authorized operations of the appellant within the SEZ. From the records it is seen that the appellant has filed the refund claim within the time period provided for in Section 118 and the appellant has borne the incidence of taxation.

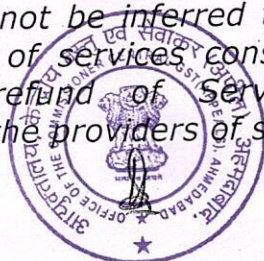
6.3 Services provided to a SEZ or unit in the SEZ is deemed as export as per the provisions of Section 2(m)(ii) of the SEZ Act, 2005 and as per Rule 31 of the SEZ Rules, 2006, the appellants are entitled for exemption from payment of service tax on the services which are used or provided to a unit in the SEZ. .As per Section 51 of the said SEZ Act, the said provisions prevail over the provisions contained in any other law for the time being in force. It is the avowed policy objective of the Government of India that exports should not bear the burden of taxes. If this policy objective has to be sub-served and the objective realized broader view of the provisions relating to refund has to be taken. Therefore, even if the appellant was not eligible for refund under Notification No. 9/2009-S.T., dated 3-3-2009, the appellants were certainly eligible for refund under Section 118 of the Central Excise, Act. 1944. In this view of the matter, rejection of service tax refund is not sustainable in law."



In the above mentioned case law it is very clearly held that if the services have been utilized in the SEZ for authorized operations, the appellants are entitled for exemption/refund as per the situation. My this view is further fortified by the case law of INTAS PHARMA LTD. Vs. COMMISSIONER OF SERVICE TAX, AHMEDABAD - 2013 (32) S.T.R. 543 (Tri. - Ahmd.) in which it has been held and I quote the relevant part thereof as under:

7. We notice that the Special Economic Zones Act, 2005 (Central Act 28 of 2005) was enacted providing for SEZ within the territory of India and for providing inter alia immunities/exemptions from taxes/duties/cesses. Section 7 of the 2005 Act enjoins that any goods or services exported outside, or imported into, or procured from the domestic tariff area, by a unit in SEZ or a developer shall, subject to such terms and conditions and limitations, as may be prescribed be exempted from payment of taxes/duties/cesses under all enactments specified in the First Schedule. The First Schedule does not enumerate the Act (Finance Act, 1994) as among the enactments in respect of which exemption from taxes/duties or cesses is available under Section 7 of the 2005 Act. However, Section 26(1)(e) enacts that subject to the provisions of sub-section (2) thereof, every developer and entrepreneur shall be entitled to exemption from Service Tax under Chapter (V) of the Act on taxable services provided to a developer or unit to carry on the authorised operations in a SEZ.

11. On true and fair construction of Notifications 9/2009 and 15/2009 issued under Section 93(1) of the Act, considered in the light of the overarching provisions of Sections 7 and 26(e) of the 2005 Act, the conclusion appears compelling that neither Notification 9/2009 nor 15/2009 disentitle immunity to Service Tax enjoined by the provisions of the 2005 Act. It therefore appears that Notification Nos. 9/2009 and 15/2009 merely contour the process by which the benefit of exemption/immunity to tax is operationalised. Notification Nos. 9/2009 and 15/2009 have provided a facilitative regime whereby a developer or units of SEZ, as recipients of taxable service are enabled the facility of claiming refund of Service Tax, remitted by taxable service providers in relation to the taxable services provided to a unit in a SEZ. On this harmonious construction, the immunity to Service Tax provided under Section 7 or 26 of the 2005 Act cannot be so interpreted as to be eclipsed the procedural prescriptions of Notification No. 9/2009 or 15/2009. These Notifications are calibrated to enable recipients of taxable services (exempt from liability to tax under the provisions of the 2005 Act), to claim refund of the Service Tax, wherever assessed and collected by Revenue or remitted otherwise by the taxable service provider, inadvertently. Considered in the light of this analysis, the substituted provisions, of clause/sub-paragraph 'c' of Notification No. 15/2009 cannot be inferred to have imposed any disability on the recipient of services consumed wholly within the SEZ, from seeking refund of Service Tax remitted on such transactions, by the providers of such services."



In view of the above position set by the Tribunals, I find that the impugned order needs to be set aside. The appeal filed by the appellant is accordingly allowed.

8. The appeal is disposed off accordingly.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)
केंद्रीय कर, अहमदाबाद
दिनांक:

सत्यापित

R.P.A.D.

(धर्मद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To

M/s. Intas Pharmaceuticals Limited,
Corporate House,
Near Sola Bridge,
S.G. Highway,
Thaltej,
Ahmedabad-380054

Copy to:-



1. The Chief Commissioner, Central Tax, Ahmedabad Zone.
2. The Principal Commissioner, Central Tax, Ahmedabad North.
3. The Dy/Asst Commissioner, Central Tax, Division VI, Ahmedabad North.
4. The Additional Commissioner, System, Central Tax, Ahmedabad North.
- ✓ 5. Guard File.
6. P.A.