



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 टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)58/North/Appeals/2019-20 / 12503 To 12507  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP- 83 to 86 -19-20  
दिनांक Date : 30/09/2019 जारी करने की तारीख Date of Issue 09/10/2019

श्री गोपी नाथ, आयुक्त (अपील) द्वारा पारित

Passed by Shri Gopi Nath Commissioner (Appeals)

ग Arising out of Order-in-Original No. GST-06/Refund/48 & 49 & 54 & 61/AC/RJM/Intas/18-19 Dated 10/10/2018 & 04/12/2018 & 23/10/2018 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 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 :-

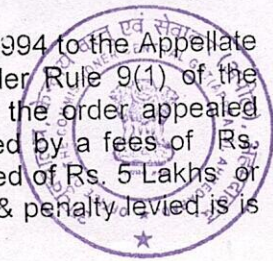
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेघानी 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 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 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 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 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.

By Speed Post

दूरभाष : 26305065



### ORDER IN APPEAL

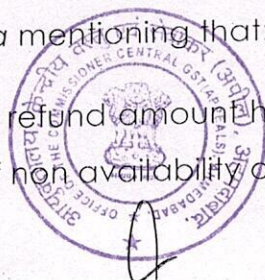
M/s. Intas Pharmaceuticals Limited, Corporate House, Near Sola Bridge, S.G. Highway, Thaltej, Ahmedabad-380054 (hereinafter referred to as the 'appellant') have filed the present appeals against the following Orders-in-Original (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioner, Central CST & Central Excise, Division-VI, Ahmedabad-North (hereinafter referred to as 'adjudicating authority') in the matter of refund claims:

Sr. No	Appeal No.	OIO No	OIO Date	Amount of dispute ( ₹)
1.	V2(ST)North/58/North/Appeals/2019-20.	GST-6/Refund/48/AC/RJM /Intas/18-19	10.10.2018	33,24,834
2.	V2(ST)North/59/North/Appeals/2019-20.	GST-6/Refund/49/AC/RJM /Intas/18-19	10.10.2018	1,03,846
3.	V2(ST)69/North/Appeals/2019-20.	GST-6/Refund/61/AC/RJM /Intas/18-19	04.12.2018	2,07,720
4.	V2(ST)70/North/Appeals/2019-20.	GST-6/Refund/54/AC/RJM /Intas/18-19	23.10.2018	3,77,929

2. The facts of the cases, in brief, are that the appellant filed refund claims, of ₹ 3,44,75,725/- dated 31.08.2017, ₹ 1,68,31,419/- dated 01.09.2017, ₹ 2,38,14,544/- dated 31.03.2017 and ₹ 2,90,92,720/- dated 11.01.2018 respectively in respect of appeals shown above in terms of Notification No.12/2013-ST dated 01.07.2013 of Service Tax paid on specified services for the authorized operations in SEZ. The said refund claims were partly sanctioned vide the impugned orders by the adjudicating authority after rejecting the amounts of ₹ 45,76,951/-, ₹ 16,03,809/- ₹ 3,01,404/- and ₹ 19,52,608/- respectively on the ground that the input services were not approved by the Approval Committee and also on the ground that invoices were not available or it were not as per Rule 4A of Service Tax rules, 1994.

3. Being aggrieved, the appellant filed these appeals against the rejection of the refund claims, on the grounds *inter alia* mentioning that:

- a) They do not contest the issue wherein refund amount has been rejected under impugned orders on account of non availability of invoices.



- b) They submitted 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 Special Economic Zone for approval of taxable service and 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 services in the said SEZ unit of the appellant;
- d) As per the notification No12/2013-ST dated 01.07.2013 exemption shall be provided by way of refund of service tax paid on specified services received by SEZ Unit or Developer, when ab initio exemption has not been availed, there is no requirement to obtain the approval of Committee for claiming refund.
- e) 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;
- f) The services of Cold storage, Services provided by Director of the Company, services provided by employee posted abroad to the company, services provided by Foreign Branch Office to the company, toleration of termination of agreement by Intas, Telecommunication Services etc on which refund is claimed are covered under Rule 76 of the SEZ Rules, 2006 and therefore, refund is admissible.
- g) 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.);
- h) Since the services in question are consumed in SEZ for authorized operations, said services are entitled for refund without going in to the fact that said services are not approved by the Approval Committee.



- i) Interest on delayed sanctioned refund is applicable. In this regard they cited case law 2011 (273) ELT 3 (SC) in case of Ranbaxi Laboratories Ltd v/s UOI and CBEC circular No.130/41/95-CX dated 30.05.1995.

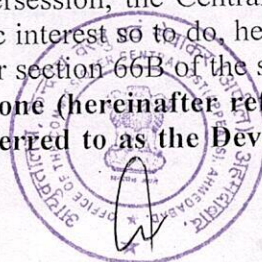
4. In the Personal hearing held on 13.09.2019 Shri Kaza Subramanyam, consultant, reiterated the grounds of appeal and produced additional submission dated 13.09.2019 for consideration wherein they quoted various citations in support of their claim and the further submitted that though the services in question are not approved by the Approval committee, they are entitled for refund as said services are consumed in SEZ for authorized operations. They also enclosed copy of OIA No.AHM-EXCUS-002-APP-31-19-20 dated 04.06.2019 in their own case on identical issue.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and written submissions made by the respondents and I observe that the appellant have not contested the issue of rejection of refund claims pertaining to invoices which were not available. Hence, I do not take up that issue for consideration and the impugned order stands affirmed to that extant. The only issue related to services not approved is being contested by the appellant, to which I take up.

6. I find that the remaining issue to be decided in the instant cases is whether the refund claims 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:

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) read with sub-section (3) of section 95 of Finance (No. 2), Act, 2004 (23 of 2004) and sub-section (3) of section 140 of the Finance Act, 2007 (22 of 2007) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 40/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 482(E), dated the 20th June, 2012, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, 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.

2. The exemption shall be provided **by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations** :

*Provided* that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax *ab initio*, subject to the conditions and procedure as stated below.

3. This exemption shall be given effect to in the following manner :

(I) The **SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations** (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.

(II) The *ab initio* exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely :-

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);

(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

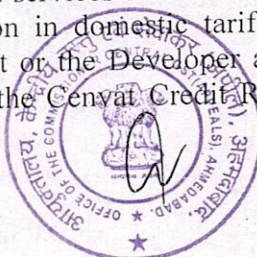
(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax;

(e) the SEZ Unit or the Developer shall furnish an undertaking, in Form A-1, that in case the specified services on which exemption has been claimed are not exclusively used for authorised operation or were found not to have been used exclusively for authorised operation, it shall pay to the government an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable on delayed payment of service tax under the provisions of the said Act read with the rules made thereunder.

(III) The **refund of service tax on (i) the specified services that are not exclusively used for authorised operation, or (ii) the specified services on which *ab initio* exemption is admissible but not claimed, shall be allowed subject to the following procedure and conditions, namely :-**

(a) the service tax paid on the specified services that are common to the authorised operation in an SEZ and the operation in domestic tariff area [DTA unit(s)] shall be distributed amongst the SEZ Unit or the Developer and the DTA unit (s) in the manner as prescribed in rule 7 of the **Cenvat Credit Rules**. For the



purpose of distribution, the turnover of the SEZ Unit or the Developer shall be taken as the turnover of authorised operation during the relevant period.

(b) the SEZ Unit or the Developer shall be entitled to refund of the service tax paid on (i) the specified services on which *ab-initio* exemption is admissible but not claimed, and (ii) the amount distributed to it in terms of clause (a).

(c) the SEZ Unit or Developer who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Act or the rules made thereunder, **shall file the claim** for refund to the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, the as the case may be, in Form A-4;

(d) the amount indicated in the invoice, bill or, as the case may be, challan, on the basis of which this refund is being claimed, including the service tax payable thereon shall have been paid to the person liable to pay the service tax thereon, or as the case may be, the amount of service tax payable under reverse charge shall have been paid under the provisions of the said Act;

(e) the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;

(f) the SEZ Unit or the Developer shall submit only one claim of refund under this notification for every quarter :

*Explanation.* - For the purposes of this notification "quarter" means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

(g) the SEZ Unit or the Developer who is not so registered under the provisions referred to in clause (c), shall, before filing a claim for refund under this notification, make an application for registration under rule 4 of the Service Tax Rules, 1994.

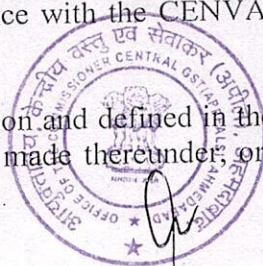
(h) if there are more than one SEZ Unit registered under a common service tax registration, a common refund may be filed at the option of the assessee.

(IV) The SEZ Unit or Developer, who intends to avail exemption or refund under this notification, shall maintain proper account of receipt and use of the specified services, on which exemption or refund is claimed, for authorised operations in the SEZ.

4. Where any sum of service tax paid on specified services is erroneously refunded for any reason whatsoever, such service tax refunded shall be recoverable under the provisions of the said Act and the rules made thereunder, as if it is recovery of service tax erroneously refunded :

5. Notwithstanding anything contained in this notification, SEZ Unit or the Developer shall have the option not to avail of this exemption and instead take CENVAT credit on the specified services in accordance with the CENVAT Credit Rules, 2004.

6. Words and expressions used in this notification and defined in the Special Economic Zones Act, 2005 (28 of 2005) or the rules made thereunder, or the said



Act, or the rules made thereunder shall apply, so far as may be, in relation to refund of service tax under this notification as they apply in relation to a SEZ.

7. This notification shall come into force on the date of its publication in the Gazette of India.

7.2 From plain reading of the above, it is very clear that exemption under this notification is applicable to the services received by units located in a Special Economic Zone (SEZ Unit) or Developer of SEZ and used for the **authorized operations**. The procedure prescribed under para 3(1) stipulates that The SEZ Unit or the Developer shall **get an approval by the Approval Committee of the list of the services** as are required for the authorised operations and on which the SEZ Unit or Developer wish to claim exemption from service tax. Therefore, first and foremost condition of the notification is that exemption can be claimed by SEZ unit or Developer in respect of those services which are approved by Approval Committee. Part(III) of para 3 of the notification supra further deals with refund to SEZ unit or Developer specifying therein procedure/conditions thereof. Para 2 of the notification supra provides that though, the notification provides exemption to specified services by way of refund, it also gives option to the provider of services not to pay service tax *ab initio* subject to the conditions and procedures thereof. As per the term of the notification supra, the exemption is available to specified services by way of refund wherein tax has been paid and also to the services wherein option not to pay service tax *ab initio* has been preferred. The procedure prescribed under para 3(1) makes it mandatory for both types of exemption claimant that the SEZ Unit or the Developer shall get an **approval by the Approval Committee of the list of the services** as are required for the authorized operations and on which the SEZ Unit or Developer wish to claim exemption from service tax. In other word, it is first and foremost condition of the notification that exemption can be claimed by SEZ unit or Developer in respect of **those services which are approved** by Approval Committee irrespective of the fact whether the exemption is claimed by way of refund or by opting not to pay service tax *ab initio*. It is one of the submissions of the appellant that though the services in question are not approved by the Approval committee, they are entitled for refund as said services are consumed in SEZ for authorized operations. In view of this observation of the appellant, it is safely acknowledged that it is nowhere contested by the appellant that the services in question were approved by the Approval committee. I observe that the condition of the notification in respect of approval of the list of the services by the Approval Committee has not been fulfilled. In view of this, the argument of the appellant that - as per the



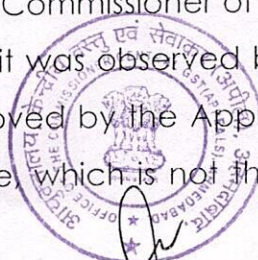


notification No.12/2013-ST dated 01.07.2013 exemption shall be provided by way of refund of service tax paid on specified services received by SEZ Unit or Developer, when *ab initio* exemption has not been availed and there is no requirement to obtain the approval of Committee for claiming refund - is not acceptable. The appellant has provided copy of OIA No.AHM-EXCUS-002-APP-31-19-20 dated 04.06.2019 in their own case for earlier period during the personal hearing as additional submission for consideration wherein their appeal has been allowed. I observe in this regard that in the notification No.12/2013-ST dtd. 01.07.2013, the crucial conditions of the notification at para 3 (I) is that -

“ (I) The **SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations** (referred to as the ‘specified services’ elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.”

Here I find that said condition has not been complied with and therefore I hold that the appellant is not entitled for benefit of exemption in notification No.12/2013-ST dtd. 01.07.2013. In view of this, I do not agree with said Order-In-Appeal.

8. It is contested by the appellant 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. I observe in this regard, that when conditional exemptions are provided subject to following conditions/procedures of the notifications, there cannot be any relaxation to the claimant of the exemption wherein conditions/procedures so prescribed under the notifications are not fulfilled. In the mechanism wherein tax has to be discharged by DTA units and refund of the same has to be claimed by SEZ unit receiving such services, approval by the Approval Committee of services to be used in SEZ unit is one of the major conditions inserted in the notification. It has revenue implications too and hence lapse in fulfilling the condition of notification cannot be overlooked considering it as a procedural lapse. It is further pleaded by the appellant that 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.). I find that it was observed by the Tribunal in said case that the issue of services not approved by the Approval Committee was beyond the scope of show cause notice, which is not the fact of the present

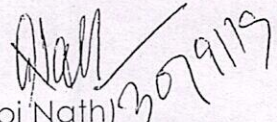


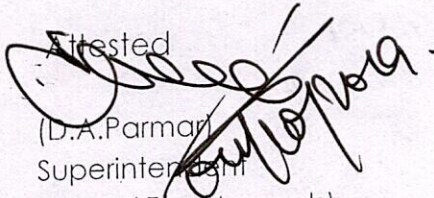
appeal. Hence this case law is distinguishable and therefore not applicable in this case. Other citations provided by the appellant i.e. Makers Mart vs. CCE & ST, Jaipur-II - 2016 (43) STR-309 (Tri.- Del.), Zydus Hospital Oncology Pvt. Ltd. vs. CCE, Ahmedabad - 2013 (30) STR-487 (Tri.- Ahm.) etc are having different back ground and cannot be made applicable to the present case.

9. In view of the above the impugned order so far it relates to rejection of refund holding that the services were not approved by the Approval Committee, is accepted. The appeals filled by the appellant are accordingly rejected.

10. The appeal is disposed off accordingly.

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

  
(Gopi Nath) 30/7/19  
Commissioner (Appeals)  
Date:

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

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

