



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.
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DIN-20210164SW0000333F67

स्पीड पोस्ट

- क फाइल संख्या : File No : File No : GAPPL/COM/STP/228/2020-Appeal /323
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-047/2020-21**
दिनांक Date : **20.01.2021** जारी करने की तारीख Date of Issue : **01.02.2021**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **GST-06/Refund/06/AC/JRS/INTAS/2020-21** dated
15.06.2020, passed by Assistant Commissioner, Central GST & Central Excise, Div.-VI,
Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

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

Respondent- Assistant Commissioner, Central GST & Central Excise, Div.-VI, Ahmedabad-North

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।

Any person aggrieved by this Order-In-Appeal 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 अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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 प्रकिया 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.



o/c

(क) 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।

(A) 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.

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

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

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।

(c) 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 दिनोंक 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-बी/35-इ के अंतर्गत:-

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

(क) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

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

This appeal has been filed by M/s Intas Pharmaceuticals Ltd., Corporate House, Near Sola Bridge, S.G. Highway, Thaltej, Ahmedabad-380054 (in short 'Appellant') against the Order-in-Original No. GST-06/REFUND/06/AC/JRS/INTAS/ 2020-21 dated 15.06.2020 (in short 'impugned orders') passed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad North (in short 'adjudicating authority').

2.1. Facts of the case, in brief, are that the appellant are engaged in the business of manufacturing, sale and marketing of Pharmaceutical Products falling under Chapter 29 & 30 of the erstwhile Central Excise Tariff Act, 1985 and having GST registration No. 24AAAC15120L1ZU for Gujarat. They had filed refund claim amounting to Rs. 70,77,439/- on 29.11.2014 before erstwhile Service Tax authorities in respect of common input services tax credit distributed to their SEZ unit through ISD invoices in terms of Notification No. 12/2013-ST dated 01.07.2013 for the quarter July-2014 to Septemebr-2014. The adjudicating authority issued Show Cause Notice No. Sd-02/Ref-150/14-15 dated 20.01.2015 to the appellant communicating discrepancies as detailed below:

- (i) they have failed to get the necessary permission for utilization of service for authorized operations as required under para 3(1) of the Notification No. 12/2013-ST dated 01.07.2013;
- (ii) they have not submitted any documents/proof of establish that they have not passed on the incidence of payment to other person;
- (iii) they have not followed the principle of distribution of service tax paid in respect of common services on the basis of turnover of authorized operations and have not maintained proper account in respect of receipt and use of the specified common services as required under para III(a) of the Notification No. 12/2013-ST dated 01.07.2013;
- (iv) they failed to submit the complete proof and documentary evidences of payment of service tax in respect of the said input services and
- (v) they have filed claim after expiry of one year as per Section 11B of the Central Excise Act, 1944.

2.2. The said SCN was decided vide Order-in-Original No. SD-02/REF-257/NT/ 2014-15 dated 25.03.2015 wherein the adjudicating authority held as under:

- (i) they have violated the condition as required under para 3(1) of the Notification No. 12/2013-ST dated 01.07.2013;
- (ii) they failed to establish that they have not passed on the incidence of payment to other person;
- (iii) they failed to fulfill the very basic condition of



the Notification No. 12/2013-ST dated 01.07.2013;(iv) they failed to furnish the completer proof and documentary evidences of payment of service tax and (v) the refund claim filed by them was time barred as per Section 11B of Central Excise Act, 1944 and point No. 3(iii)(e) of Notification No. 12/2013-ST dated 01.07.2013 and therefore, refund claim has been rejected in terms of Notification No. 12/2013-ST dated 01.07.2013 read with Section 11B of the Central Excise Act, 1944 as made applicable to Service Tax under Section 83 of Finance Act, 1994.

2.3 Being aggrieved with the Order-in-Original No. SD-02/REF-257/NT/2014-15 dated 25.03.2015, the appellant preferred an appeal before the Commissioner (Appeals-II) Ahmedabad, who vide OIA No. AHM-SVTAX-000-APP-158-15-16 dated 21.03.2016 **rejected the refund claim amounting to Rs. 64,00,599/- as time barred.** He further partly allowed the appeal and also **remanded back** to the adjudicating authority for re-verification and re-quantification.

2.4 Being aggrieved with the OIA No. AHM-SVTAX-000-APP-158-15-16 dated 21.03.2016, the said appellant preferred an appeal before the Hon'ble CESTAT, who vide order No. A/12792/2017 dated 28.09.2017 rejected the appeal due to **delay in filing.** Being aggrieved with the Hon'ble CESTAT's order dated 28.09.2017, the said appellant preferred an appeal before the Hon'ble Gujarat High Court, Ahmedabad, who vide Oral Order dated 06.04.2018 **condoned the delay** and set aside the order of Tribunal and requested to hear the appeal **on merits.**

2.5. As per the direction of Hon'ble Gujarat High Court, Ahmedabad vide Oral Order dated 06.04.2018, Hon'ble CESTAT decided the case vide order No. A/12827/2018 dated 28.11.2018 wherein Hon'ble Tribunal find that both the lower authorities have not considered properly the **issue of limitation** and extension thereof; that the issue of **quantification** of input service credit for the purpose of refund was also not verified properly, therefore, order for rejection of claim is pre-mature and no proper speaking order was passed. Accordingly, set aside the impugned order and remand the matter to the adjudicating authority for passing a fresh order after considering all the submissions made/to be made by the appellant.

2.6. As per the direction of Hon'ble Tribunal vide order dated 28.11.2018, the adjudicating authority vide impugned order dated 15.06.2020 held that the appellant failed to furnish original documents for examination and verification and hence rejected the refund claim in terms of Notification No. 12/2013-ST dated 01.07.2013 read with Section



11B of the Central Excise Act, 1944 as made applicable to Service Tax under Section 83 of Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- That they submitted self-attested documents to adjudicating authority on 18.05.2020 by email and also submitted hard copy duly self-attested on 26.05.2020 and requested to grant time till 07.06.2020 for submission of remaining documents;
- That GST division vide their letter dated 18.05.2020 for the first time raised requirement of original documents;
- That due to lockdown, they are unable to submit original documents and submitted self-attested documents to adjudicating authority vide letter dated 01.06.2020 and stated their practical & factual difficulty in submitting original documents;
- That the adjudicating authority relied on the judgement in case of Cipla Limited reported in 2016 (343)ELT 894 which is mis-placed as the issue is not parimateria;
- That there is no dispute in the impugned order, with reference to eligibility of service and manner and method of distribution of Cenvat Credit of Service Tax by appellant's Input Service Distributor;
- That in the instant case, the Input Service Distributor, distributed Cenvat Credit of Service Tax, to appellant's SEZ Unit as per Rule 7 of the Cenvat Credit Rules, 2004;
- That for the purpose of distribution, the turnover of the SEZ Unit or the Developer shall be taken as the turnover of authorized operation during the relevant period;
- that the adjudicating authority has given findings repeatedly at several places to the effect that the appellant have not submitted documents for verification of refund claim are factually incorrect as they are self-contradictory which is evident from the findings and given parawise comments on the impugned order;
- that the finding of the adjudicating authority are not sustainable both on merit and law and requested to set-aside impugned order.

4.1. Personal Hearing in the case was scheduled on 18.12.2020 through virtual mode. Shri Subrahmanyam Kaza, Consultant, appeared on behalf of the appellant for hearing. He re-iterated the submissions made in Appeal Memorandum and additional written submission showing details of Service Tax paid contained in Annexure-8. He stated that he had submitted all the relevant documents. In their further written submission, facts mentioned in appeal memorandum have been re-iterated.



4.2. The appellant also submitted copies of ST-3 returns, service tax payment challan, invoices of foreign service provider, statement showing details of service tax paid on foreign remittances and C.A's Certificate dated 21.03.2015 alongwith Appeal Memorandum.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum. I find that the issue to be decided in the matter is as to whether in the facts and circumstances of the case, the appellant's claims for refund is legally permissible in terms of Notification No. 12/2013-ST dated 01.07.2013 read with Section 11B of the Central Excise Act, 1944 as made applicable to Service Tax under Section 83 of Finance Act, 1994 or otherwise?

6. It is observed from case records, appeal memorandum and written submission that the appellant were unable to submit original documents and submitted self-attested documents to adjudicating authority due to nationwide lock down and stated their practical & factual difficulty in submitting original documents. In this context, it is observed that the adjudicating authority vide letter dated 18.05.2020, first time requested the appellant to provide original documents and in reply to the same, the appellant vide their letter dated 26.05.2020 submitted self certified copies of certain documents and requested time upto 07.06.2020. Further, the appellant vide their letter dated 01.06.2020 stated that they were unable to submit original documents as the concerned person in charge of their record room is residing in containment zone and hence submitted self-attested documents to adjudicating authority due to nationwide lock down and stated their practical & factual difficulty in submitting original documents. Hence, it is apparent from records that, the appellant had shown their difficulty in providing original documents due to nationwide lock down, but the adjudicating authority without giving further opportunity proceeded to decide the matter and rejected the refund claim on the ground of non submission of original documents. I find that considering the pandemic situation, the appellant should have been given another opportunity for presentation of documents. I further find that Hon'ble Tribunal observed that the lower authorities have not considered properly the **issue of limitation** and extension thereof and also the **quantification** of input service credit for the purpose of refund, which was not verified properly by the adjudicating authority and the order for rejection of claim is pre-mature and no proper speaking. Accordingly, Hon'ble Tribunal set aside the order and remand the matter to the adjudicating authority for passing a fresh order after considering all the submissions made/to be made by the appellant. However, I find that the adjudicating authority has not followed said directions and also not given further opportunity to the appellant for

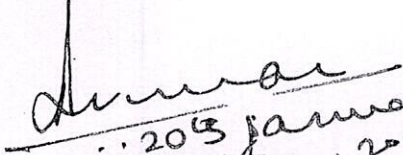


submission of original documents, and thereby not followed the principles of natural justice.

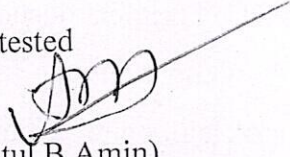
7. In view of the above observations, the justification to the present appeal can only be done after the adjudicating authority complies with the said directions of Hon'ble Tribunal. Orders arising on account of denovo proceedings without compliance to the directions of higher appellate authorities cannot serve the purpose of the proceedings and becomes liable for remitting again for very same purpose. I, therefore, without going into merit of the case, remand the case back to original adjudicating authority to abide by the directions of Hon'ble CESTAT under Order No. A/12827/2018 dated 28.11.2018 ensuring principle of natural justice and to order a fresh after examination of the documents. The appellant is directed to produce all the original documents and other supporting documents to the adjudicating authority for verification and in the matter.

8. In view of above discussion, I remand the case back to the original adjudicating authority and order afresh giving the opportunity of natural justice to the appellant.

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


2023 January 2021.
(Akhilesh Kumar)
Commissioner (Appeals)
Ahmedabad
/ /2020

Attested


(Atul B Amin)
Superintendent (Appeals)
CGST, Ahmedabad



BY SPEED POST TO:

To

M/s. Intas Pharmaceuticals Ltd.,
Corporate House,
Near Sola Bridge, S.G. Highway,
Thaltej, Ahmedabad-38054.

Copy to:-

1. The Principal Chief Commissioner, Central GST Zone, Ahmedabad.
2. The Commissioner, Central GST, Ahmedabad North.
3. The Assistant Commissioner, CGST, Division-VI, Ahmedabad North.
4. The Assistant Commissioner, (Systems), CGST, Hq., Ahmedabad North.
5. Guard file.
6. P.A file.