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
☎ 26305065-079 : टेलेफैक्स 26305136 – 079 :
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DIN-20220764SW000071717F

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2238/2021-Appeal-O/o Commr-CGST-Appl-Ahmedabad/2795-99

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-16/2022-23**
दिनाँक Date : **11.07.2022** जारी करने की तारीख Date of Issue : **25.07.2022**

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original Nos.**GST-06/Refund/06/AC/JRS/INTAS/2021-22 dated 22.06.2021**, passed by the Assistant Commissioner, Central GST & Central Excise, Division-VI, Ahmedabad-North.

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

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

Respondent- The Assistant Commissioner, Central GST & Central Excise, Division-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 पूवोक्त 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.

(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 मामलें 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 केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(10) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो 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) धारा 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:

(xiii) amount determined under Section 11 D;
(xiv) amount of erroneous Cenvat Credit taken;
(xv) 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, Nr. Sola Bridge, S.G. Highway, Thaltej, Ahmedabad-380054 (in short '*appellant*') against the OIO No.GST-06/Refund/06/AC/JRS/Intas/2021-22 dated 22.06.2021 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST & Central Excise, Division-VI, Ahmedabad North (in short '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant are engaged in the manufacture of pharmaceutical products and are having a unit at SEZ, Sanand, where they undertook the authorized operations within the SEZ units, in terms of LOA (Letter of Authorization) issued by the Development Commissioner. The appellant received various input services for its SEZ unit from different Foreign Service providers, on which they had discharged their service tax liability under Reverse Charge Mechanism (RCM). Subsequently, they distributed the credit of input services to all its units in compliance of Rule 7(d) of the CENVAT Credit Rules (CCR), 2004, by issuing ISD Invoice No. 56/2014-15 dated 14.08.2014. Thereafter, they filed a claim of Rs.70,77,439/- on 29.11.2014, pertaining to the quarter July, 2014 to September, 2014, in terms of Notification No. 12/2013-ST dated 01.07.2013, seeking refund of the common input service tax credit distributed to their SEZ unit through ISD (Input Service Distributor) invoice.

2.1 A Show Cause Notice (SCN) No.Sd-02/Ref-150/14-15 dated 20.01.2015 was issued to the appellant communicating the discrepancies in their claim as it appeared that the appellant had **(a)** failed to get necessary permission for utilization of service for authorized operations as required under Para-3(I) of Notification No.12/2013-ST dated 01.07.2013 **(b)** as per Para 3 (III)(a) they have not followed the principles of distribution of service tax paid in respect of common services on the basis of turnover of authorized operations and also have not maintained proper account of receipt and use of the specified common services; **(c)** they failed to furnish the complete proof and documentary evidences of payment of service tax in respect of the said input invoices, **(d)** refund in respect of 16 challans involving Rs.64,00,599/-, filed by the appellant appeared to be time barred in terms of Section 11B of the CEA, 1944 read with Para 3 (III)(e) of the said notification, as they were filed after the expiry of one year from the date of payment and **(e)** the refund claim has been filed for the period July, 2014 to September, 2014, whereas the turnover period taken was April, 2013 to December,2013, which is not the relevant period in terms of the said notification.

2.2 The said SCN was adjudicated vide OIO No.SD-02/REF-257/NT/2014-15 dated 25.03.2015, wherein the refund claim was rejected on the grounds that the claimant has violated the condition prescribed under Notification No.12/2013-ST dated 01.07.2013. Being aggrieved by the said OIO, the appellant preferred appeal before the Commissioner (Appeal). The Commissioner (Appeal) vide OIA No. AHM-SVTAX-000-APP-158-15-16 dated 25.03.2015, held the claim of Rs.64,00,599/- as time barred on limitation and partially remanded the matter to the adjudicating authority for re-examining the distribution and the turnover of the SEZ units to be taken during the relevant period and re-quantifying the claim in terms of Para-3(III)(a) of the said notification and Rule 7 of the CCR, 2004.

2.3 Aggrieved by the said OIA, the appellant went in appeal before Hon'ble Tribunal. Hon'ble CESTAT vide Order No. A/12792/2017 dated 28.09.2017, rejected the appeal for

being time barred. Being aggrieved with the said CESTAT order, the appellant went in appeal before the Hon'ble High Court of Gujarat. The Hon'ble High Court vide Oral Order dated 06.04.2018, condoned the delay and set-aside Tribunal's order and requested Tribunal to hear the appeal on merits. Consequently, Hon'ble CESTAT allowed the appeal and vide Order No. A/12827/2018 dated 28.11.2018, observed that the adjudicating authorities have not considered the issue of limitation and extension thereof and the quantification of input service credit for the purpose of refund was also not verified properly, and remanded the matter to the adjudicating authority for passing a fresh order after considering all the submissions made by the appellant.

2.4 In the remand proceedings the adjudicating authority decided the case afresh and rejected the refund claim, vide OIO No.GST-06/Refund/06/AC/JRS/Intas/2020-21 dated 15.06.2020, on the grounds that the appellant have not produced original documents for re-examination and re-verification. Aggrieved by the said OIO, the appellant preferred appeal before Commissioner (A). This authority, vide OIA No. AHM-EXCUS-002-APP-047/2020-21 dated 01.02.2021, remanded the matter to the adjudicating authority as the directions of Hon'ble Tribunal was not followed. The adjudicating authority again rejected the refund claim vide the impugned order, on the findings that the method of computing the credit distribution period is contrary to the provisions of law and that the claim is hit by limitation as the date of payment of relevant challans furnished by the appellant have crossed the period of one year.

3. Aggrieved by the impugned order, the appellant is in appeal before me contesting the impugned order on following grounds;

- The exemption from payment of service tax under Chapter-V of the Finance Act, 1994, on the taxable services, provided to a Developer or a Unit to carry on the authorized operations in a SEZ, is subject to the terms & conditions prescribed in Section 26(1)(e), Section 26(2) and Section 2(w) of the SEZ Act, 2005. Rule 22 of the SEZ Rules, 2006, prescribes the terms and conditions to which exemptions will be availed by the unit and Rule 31 provides exemption from payment of service tax on taxable services rendered to a Developer or a unit by any service provider for the authorized operations in SEZ. All these provisions do not mandate any pre-condition to pay service tax and then claim it as a refund. Since Section 51 of the SEZ Act provides that the SEZ Act shall have an overriding effect over other laws. Therefore, in terms of Section 26, Section 55 of the SEZ Act read along with Rule 22 and 31 of the SEZ Rules, the exemption is available for all taxable services rendered to a unit or developer for authorized operations in a SEZ. Therefore, the conditions prescribed in Notification No.12/2013-ST for granting exemption to a Developer/Unit in SEZ are inconsistent to the conditions provided under SEZ Act, hence violate the overall scheme of SEZ Act when the intent of the legislation is to exempt the goods and services received by developer/units for authorized operations in SEZ from all taxes and duties to promote exports in India. They placed reliance on following citations;
  - Norasia Container Lines Vs CCE – 2011 (23) STR 295 (T)
  - Reliance Ports & Terminals Ltd Vs CCE- 2013- TIOL-1473-CESTAT
  - 2013(32) STR 543- Appellant's own case

- Rejecting refund on the grounds of being time barred is not sustainable as under SEZ Act, there is no limitation period prescribed under Section 26(1)(e) and Rule 22 of the SEZ Act 2005 as well as SEZ Rules, 2006. They supported their argument by placing reliance on
  - Wabco India Ltd- 2021-VIL-263-CESTAT-CHE-ST
  - GMR Aerospace Engineering Ltd-2019 (31) GSTL 596(AP)
  - ATC Tyres Pvt. Ltd- 2021-VIL-106-CESTAT-CHE-ST
- They claim that they were under the bonafide belief that refund has to be filed within one year from the end of the month in which the ISD invoice was issued. Since it was not possible to know the exact date of payment of service tax made by / to the service provider, the adjudicating authority could have condoned the delay. They submitted that out of the total amount of Rs.70,77,441/-, an amount of Rs.29,53,247/- is very much within one year, hence, they also sought relief to consider such claim amount within time limit or direct the adjudicating authority to re-consider allowing the extended period as far as the remaining amount of Rs.41,24,195/- is concerned.
- The CENVAT credit was distributed by the appellant as an ISD to SEZ unit in terms of Rule 7 of the CCR, 2004. The ISD is required to obtain registration they are not service providers or recipient of service, as per Notification No.27/2005-ST dated 07.06.2005 as amended vide Notification No. 06/2007-ST dated 01.03.2007. They are also required to file Half Yearly return therefore the cenvat credit taken and distributed would be available from the statutory ST-3 returns filed. Since ISD is also subjected to EA 2000 and there is nothing on record to prove that the service tax credit was wrongly distributed to SEZ unit which therefore implies that the said credit was never disputed by the department hence rejection of refund of such credit is not maintainable.
- The adjudicating authority failed to appreciate the fact that the credit was distributed on the basis of the export turnover for the period from April to December, 2013. Even if the methodology adopted was not correct, then the adjudicating authority should have given the opportunity to re-compute the SEZ refund amount based on the total turnover ratio of the F.Y. 2012-13 or he himself should have considered the correct distribution method. As per revised turnover ratio (Domestic + Export) of previous F.Y. 2012-13 comes to 10.82% and accordingly revised SEZ refund comes to Rs.35,60,516/-. The appellant has prayed to grant the revised refund amount calculated.
- As per the additional submissions dated 23.03.2015 made in reply to SCN and from the Chartered Accountant's certificate it is clear that incidence of refund amount has not been passed on to any other person, accordingly the bar of unjust enrichment will not apply. Therefore the impugned order is unlawful and was passed in gross violation of natural justice and without authority.

4. Personal hearing in the matter was held on 07.06.2022, through virtual mode. Shri Willingdon Christian, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum as well as synopsis submitted by him during personal hearing.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum, submissions

made during the time of personal hearing as well as in the synopsis submitted on 07.06.2022 and the copies of documents submitted in support of their contentions.

6. I have gone through Hon'ble CESTAT Order dated 28.11.2018. It is observed that the CESTAT had remanded the matter principally on two issues **(i)** that the lower authorities have not considered the issue of limitation and extension thereof and **(ii)** that the issue of quantification of input service credit for the purpose of refund was also not verified properly. The adjudicating authority was directed to re-examine these issues and after considering the submissions made by the appellant, pass a speaking order.

6.1 The adjudicating authority in the remand proceedings while rejecting the refund claim, held that **(i)** the claim was hit by limitation as the claim was filed beyond the stipulated time period of one year prescribed under Section 11B of the CEA, 1944 and as provided under Notification 12/2013-ST dated 01.07.2013; **(ii)** that the appellant for the purpose of distribution, considered the period April, 2013 to December, 2013, which is not as per the relevant period prescribed under the said notification, and **(iii)** that the appellant have computed the credit on the basis of aggregate turnover of domestic and export clearances, which was not as per the ratio and formulae laid down under the prevailing law. As the appellant did not furnish any fresh calculation work sheet as per the prescribed ratio mandated under the law, he, therefore, rejected the claim for non-fulfillment of conditions prescribed in the said notification.

7. On the first issue, the appellant have argued that they were under the bonafide belief that one year is to be computed from the date of ISD invoice issued, as it was not possible for the SEZ unit to know the exact date of service tax payment made by the ISD, and hence the adjudicating authority could have condoned the delay. They claimed that Section 51 of the SEZ Act, 2005 has an overriding effect over other laws, therefore, the time limit prescribed in the notification cannot be considered as a ground for rejecting the refund. Though, considering the delay in filing the claim, they themselves have admitted that out of total claim of Rs.70,77,441/-, an amount of Rs.29,53,247/- is within the time limit of one year and for the remaining amount of Rs.41,24,195/- they have sought extension. On the second issue, they argued that the credit was distributed on the basis of export turnover for the period from April, 2013 to December, 2013, which is correct method and that the adjudicating authority should have given them the opportunity to re-compute the refund amount based on total turnover ratio of the F.Y. 2012-13. They contended that the adjudicating authority himself should have considered the correct distribution method or should have directed them to re-submit the correct refund amount after computing the credit as per the formulae laid down. They however claim that as per the correct formulae and the revised Turnover Ratio (Domestic+Exports) of previous F.Y. 2012-13, the revised refund comes to **Rs.35,60,516/-,** which may be granted to them.

7.1 Going by the above submissions made by the appellant, it is observed that the appellant, as per revised computation method and after considering the F.Y. 2012-13 as the relevant period, have now claimed refund of only Rs.35,60,516/- in lieu of earlier claim of Rs.70,77,441/-.

7.2 The appellant has filed the refund claim in terms of Notification No. 12/2013-Service Tax dated 1st July, 2013, which provides exemption from the levy of service tax on the services received by a unit located in a Special Economic Zone (SEZ) or Developer of SEZ,

and used for the authorized operations. This exemption can be claimed by way of refund of service tax paid on specified services received by SEZ units or the Developer and used exclusively for the authorized operations. The person liable to pay service tax has the option not to pay the service tax *ab initio,* subject to the conditions prescribed in Para 3(II) of the said notification. If the specified services are not exclusively used for authorized operation, or where *ab initio* exemption admissible but not claimed, then the refund shall be allowed subject to the conditions prescribed in Para-3(III) of the notification. The appellant in the present case have claimed refund under Clause 3(III) of the said notification and, therefore, in terms of clause (e) of Para 3(III), refund has to be filed within one year from the end of the month in which the actual payment of service tax was made by the SEZ unit or Developer, to the service provider or such extended period as the Assistant Commissioner /Deputy Commissioner of Central Excise shall permit. Relevant text of clause (e) is re-produced below;

> ***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;*

7.3 In terms of above clause, the adjudicating authority has the discretion to grant extension or otherwise, which I find in the instant case, was not exercised by the adjudicating authority and that no speaking order was passed while deciding the aspect of extension thereof. Thus, I find that the impugned order to that extent is a non-speaking order.

7.4 The appellant nevertheless have claimed that on conjoint reading of Section 26 of the SEZ Act, 2005 and Rule 31 of SEZ Rules, 2006, the taxable services rendered to SEZ units or Developer are exempted under the SEZ Act and Section 51 have the overriding effect over other laws, therefore, the benefit of exemption or refund of service tax paid on such taxable services cannot be taken away merely because the claim was not filed within one year from the date of payment especially when there is no such time limit prescribed under the SEZ Act. They relied on various citations to support their contentions.

7.5 To examine their argument, relevant extract of Section 26 & Section 51 of the SEZ Act, 2005 and Rule 31 of the SEZ Rules, 2006 are reproduced below;

> ***SECTION 26. Exemptions, drawbacks and concessions to every Developer and entrepreneur. –***
>
> ***(1)*** *Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely :-*
>
> ***(e) exemption from service tax under Chapter V of the Finance Act, 1994 (32 of 1994) on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone;***
>
> ***(2)*** *The Central Government may* ***prescribe,*** *the manner in which, and, the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the Developer or entrepreneur under sub-section (1).*

The word *"**prescribe**"* under SEZ Act is defined under Section 2(w) to mean the rules framed by the Central Government under the SEZ Act, 2005.

Rule 31 of the SEZ Rules, 2006 (subsequently omitted vide Notification No GSR 909(E) dated 19.09.2018) stipulates that;

***Rule 31**: The exemption from payment of service tax on taxable services under section 65 of the Finance Act, 1994 (32 of 1994) rendered to a Developer or a Unit (including a Unit under construction) by any service provider shall be available for the authorized operations in a Special Economic Zone.*

***Section 51. Act to have overriding effect.** - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*

It is observed that the SEZ Act, 2005 was enacted after enactment of the Finance Act, 1994 and Section 51 of the Act declares that the provisions of the SEZ Act, 2005, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. On conjoint reading of Section 26 of the SEZ Act, 2005 and Rule 31 of the SEZ Rules, 2006, the taxable services rendered to SEZ units or Developer are exempted and by virtue of Section 51, the SEZ Act shall have the overriding effect over other laws including the Finance Act, 1994.

7.6 The appellant, in support of their argument have placed reliance on the decision of Hon'ble CESTAT, Chennai passed in the case of **Wabco India Ltd- 2021 (54) G.S.T.L. 37 (Tri. - Chennai)**, wherein at para-5, it was held that;

"The question as to whether the time-limit prescribed in the notification would prevail over Sections 51 and 26(1)(e) of the SEZ Act was considered by the Hon'ble Telengana and Andhra Pradesh High Court in the case of M/s. GMR Aerospace Engineering Ltd. v. Union of India reported in 2019 (8) TMI 748. The Division Bench of the Tribunal in the case of M/s. DLF Assets Pvt. Ltd. v. Commissioner, Service Tax, Delhi-I reported in 2020 (11) TMI 35-CESTAT NEW DELHI. It was held that the conditions of the notification cannot be pressed into application to deny the refund to a SEZ Unit. Para 21 of the said decision reads as under:-

"Thus, what follows is that the Commissioner was not justified in examining whether the conditions set out in the Notification dated March 3, 2009 were satisfied or not for grant of any exemption from service tax Section 26(2) of the SEZ Act does provide that the Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions shall be granted to the Developer under sub-section (1) but what is important to notice, and as was also observed by the Andhra Pradesh High Court, the word "prescribe" would mean "prescribed by rules made by the Central Government under the SEZ Act," in view of the definition of "prescribed" under section 2(w) of the SEZ Act. The Notification dated March 3, 2000, which has been issued under section 93 of the Finance Act, therefore, has no application."

In the case of M/s. ATC Tyres Pvt. Ltd. v. Commissioner of GST & CE, Tirunelveli reported in 2021-VIL-106-CESTAT-CHE-ST had considered the very same issue of limitation mentioned in the Notification No. 12/2013-S.T. ***It was held that Section 51 of SEZ Act has an overriding effect and, therefore, the conditions mentioned in the***

notification cannot be applied so as to deny the refund when substantial conditions prescribed in the SEZ Act have been fulfilled.

7.7 Similarly, they also placed their reliance on the decision passed by Hon'ble CESTAT, Principal Bench New Delhi, in the case of **DLF ASSETS PVT. LTD -2021 (45) G.S.T.L. 176 (Tri. - Del.)** wherein at para 21 Tribunal held that;

21. Thus, what follows is that the Commissioner was not justified in examining whether the conditions set out in the Notification dated March 3, 2009 were satisfied or not for grant of any exemption from service tax. Section 26(2) of the SEZ Act does provide that the Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions shall be granted to the Developer under sub-section (1) but what is important to notice, and as was also observed by the Andhra Pradesh High Court, the word "prescribe" would mean "prescribed by rules made by the Central Government under the SEZ Act," in view of the definition of "prescribed" under section 2(w) of the SEZ Act. The Notification dated March 3, 2009, which has been issued under Section 93 of the Finance Act, therefore, has no application.

7.8 I find that the both the above decisions were passed, on the basis of the judgment passed by Hon'ble High Court of Judicature at Hyderabad in the case of **GMR Aerospace Engineering Ltd.- 2019 (31) G.S.T.L. 596 (A.P.),** wherein it has held that;

30. *……The word "prescribe" is verb. Generally no enactment defines the word "prescribe". But the SEZ Act 2005 defines the word "prescribe" under Section 2(w) to mean the rules framed by the Central Government under the SEZ Act, 2005. The space is also not left unoccupied, as the Central Government has issued a set of Rules known as "the Special Economic Zones Rules, 2006", wherein the Central Government has prescribed the terms and conditions for grant of exemptions under Rule 22. Therefore, there is no question of comparing the terms and conditions prescribed in Rule 22 with the terms and conditions prescribed in the notifications issued under any one of five enactments listed in Section 26(1) to find out whether there was any inconsistency.*

33. *The word "prescribe" is used in the present tense in Section 26(2) and in the past tense in Section 7. Both will have the same meaning as assigned to the word under Section 2(w).* ***The moment a set of rules is issued either in respect of matters covered by Section 7 or in respect of matters covered by Section 26(1), there is no scope for invoking any other law for imposing any other condition.***

34. *The benefit of exemptions granted under the notifications issued under Section 93 of the Finance Act, 1994, are available to any one and not necessarily confined to a unit in a special economic zone. Section 93 of the Finance Act, in that sense is a general power of exemption available in respect of all taxable services. But, Section 26(1) is a special power of exemption under a special enactment dealing with a unit in a special economic zone.* ***Therefore, the notifications issued under Section 93 of the Finance Act, 1994 cannot be pressed into service for finding out whether a unit in a SEZ qualifies for exemption or not.***

43. *It is only the issues relating to refund, demand, adjudication, review and appeal, which were left unoccupied by the SEZ Act and the Rules framed thereunder. Realising the vacuum in respect of these specific areas, sub-rule (5) was inserted under Rule 47. Sub-rule (5) of Rule 47 makes a reference to the provisions of the three enactments namely Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 and the Rules made thereunder and the notifications issued thereunder. It is by virtue of this sub-rule (5) that the authorities can fall back upon the Rules and notifications issued under those three enactments. The very fact that sub-rule (5) was inserted would show, that but for its insertion, the respondents cannot fall back upon the Rules framed under the Customs Act etc., for dealing with a question of refund, demand, adjudication etc."*

44. The issue can be looked at from another angle also. If sub-rule (5) of Rule 47 had also included the procedure for grant of exemption within its purview, then the stand taken by the Department would be perfectly valid. ***The very fact that sub-rule (5) of Rule 47 made the Rules and notifications issued under certain Acts applicable only to issues of refund, demand etc., would show that Rules 22 and 31 have independent legs to stand."***

7.9 I find that Notification No.12/2013-Service Tax dated 1st July, 2013, has been issued under Section 93(1) of the Finance Act, 1994, wherein the entire exemption mechanism by way of refund has been put in place. However, considering the overriding effect of Section 51 of the SEZ Act, 2005, conditions prescribed under the said notification cannot be pressed into for deciding whether a unit in a SEZ qualifies for exemption or not as Section 26(1) is a special power of exemption under a special enactment dealing with a unit in a special economic zone. Also, by applying the ratio of above judgments, I find that the time limit prescribed in the Notification No. 12/2013-S.T, cannot be made applicable to the instant case and the refund claim filed by the appellant cannot be rejected on limitation aspect when no such time limit is prescribed in the provisions of SEZ Act, 2005.

8. On the **second issue,** adjudicating authority held that the appellant has considered the period April, 2013 to December, 2013, which is not the relevant period prescribed for computing the credit distribution and that the method of computing the credit was not as per the formulae prescribed. However, neither any findings nor any reasoning was recorded by the adjudicating authority as to why the relevant period was not correct. Though the appellant in the instant appeal, has re-considered the relevant period and as per the revised turnover ratio for the F.Y. 2012-13, they re-computed the credit and arrived at the revised refund claim of Rs.35,60,516/-.

8.1 Rule 7 of the CCR, 2004, prescribes the manner of distribution of credit by ISD (as amended vide Notification No.05/2014-CE(NT) dated 24.02.2014), wherein relevant period has been specified as under;

(d) credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period.;

Explanation 3 - For the purposes of this rule, the ***'relevant period'*** *shall be, -*

(a) If the assessee has turnover in the 'financial year' preceding to the year during which credit is to be distributed for month or quarter, as the case may be, the said financial year; or

(b) If the assessee does not have turnover for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed.".

In terms of above notification, pro-rata distribution of service tax credit shall be based on the turnover of such unit during the relevant period (i.e. financial year, proceeding to the year in which credit is to be distributed for the quarter/month.) to the total turnover of all its units which are operational in the current year.

8.2 I find that the refund claim filed by the appellant under Form A-4, was for the quarter July, 2014 to September, 2014 i.e. after the common input service tax credit was

distributed to them through ISD Invoice No. 56/14-15 dated 14.08.2014, issued under Rule 4A of the Service Tax Rules, 1994. The credit distributed was in respect of the service tax payment made during the F.Y. 2013-2014. The manner of distribution of credit by ISD is prescribed in Rule 7 of the CCR which stipulates that the credit is to be distributed pro-rata on the basis of the turnover of such SEZ units during the relevant period to the turnover of all its units operational in the current year. The relevant period as per the notification shall be the financial year preceding to the year during which the credit is to be distributed for the month/quarter in the said financial year.

8.3 Earlier the appellant considered the period April, 2013 to December, 2013 as relevant period, which the adjudicating authority held was not as per relevant period prescribed under Notification No.05/2014-CE. The adjudicating authority, however, did not give any findings justifying the above observation thus to that extent the impugned order is a non-speaking order.

9. Further, the adjudicating authority also observed that the computation of credit was not as per the formulae prescribed, without giving any reasoning. I find that the adjudicating authority considering the countless round of litigations, could have guided the appellant to compute the correct credit ratio, instead of out rightly rejecting the claim citing wrong calculation. As the impugned order is silent as to how the credit distribution ratio computed by the appellant was incorrect, I find the impugned order passed is not a reasoned order. However, in view of the fact that the appellant in the instant appeal, considering the turnover ratio for the F.Y. 2012-13, re-computed the credit and arrived at the revised refund claim of Rs.35,60,516/-, I find that the same needs to be re-examined and verified with the documentary evidences, hence, needs to be remanded.

9.1 I find that adjudicating authority has failed to follow the directions of Hon'ble CESTAT, issued vide Order dated 28.11.2018, as the impugned order passed is a non-speaking order in as much as the reasons for not accepting the credit distribution ratio computed by the appellant for the purpose of refund has not been recorded with due justification. I, therefore, find that the matter needs to be remanded back to the adjudicating authority to examine the matter afresh as directed by Hon'ble CESTAT.

9.2 The appellant have produced a certificate dated 21.03.2015, issued by Apaji Amin & Co., Chartered Accountants, certifying that the service tax amount claimed as refund has neither been included in the cost of production of the products manufactured by them nor passed on the incidence of duty to the buyers of the goods. Thus, there can be no presumption of passing of duty to attract the doctrine of unjust enrichment. So, considering the fact that the original claim filed of Rs.70,77,441/- by the appellant was sought on the wrong computation of credit, which now the appellant have revised and reduced to Rs.35,60,516/-, I, therefore, remand the matter to the adjudicating authority to re-examine the computation of the credit amount arrived by the appellant in terms of the Rule 7(d) of the CCR, 2004 and the consequential refund arising thereof.

10. Considering the fact that the directions issued by CESTAT vide its Order dated 28.11.2018, were not followed by the adjudicating authority while passing the impugned order, I, in view of the above discussions and findings, set aside the impugned order and remand the matter to the adjudicating authority for re-examining the computation of the credit amount arrived by the appellant, in terms of the Rule 7(d) of the CCR, 2004 and the consequential refund thereof and accordingly pass a reasoned and speaking order,

following the principles of natural justice. Further, I also direct the appellant to submit relevant documents in support of the revised refund claim before proper jurisdictional authority.

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

(अखिलेश कुमार) 25th July 2022
आयुक्त (अपील्स)

Date: 7.2022

Attested
Rekha Nair
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

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

The Assistant Commissioner,
Central GST & Central Excise,
Division-VI, Ahmedabad North - **Respondent**

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North. (For uploading the OIA)
4. Guard File.