



सत्यमेव जयते

आयुक्त ( अपील ) का कार्यालय,  
Office of the Commissioner (Appeal),  
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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DIN-20220264SW000000D577

रजिस्टर्ड डाक/ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/367/2021-APPEAL /6275-79  
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-125/2021-22  
दिनांक Date : 17-02-2022 जारी करने की तारीख Date of Issue : 18-02-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

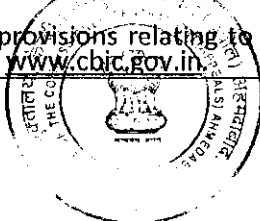
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. ZZ240121011002 DT. 13.01.2021 issued by  
Assistant Commissioner, CGST, Division III, Vatva II, Ahmedabad South

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

M/s. Atlas Pharmachem Industries Pvt. Ltd. Plot No. 286/287,  
Phase II, GIDC Vatva, Ahmedabad 382445

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax ( Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



## ORDER IN APPEAL

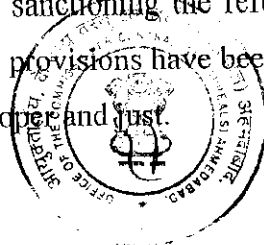
M/s. Atlas Pharmachem Industries Pvt. Ltd. Plot No. 286/287, Phase II, GIDC Vatva, Ahmedabad 382 445 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 24-2-2021 against OIO No. ZZ2401210110002 dated 13-1-2021 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, CGST, Division III, Vatva II, Ahmedabad South. (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the facts of the case is that the appellant, GSTIN 24AAGCA2633L2ZR, filed refund application for refund of Rs. 13,18,500/- in respect of supplies made to an EOU viz M/s. Nosch Labs Pvt. Ltd., Telangana on payment of tax. The appellant was issued show cause notice (RFD 08) proposing rejection of the claim on the ground of non submission of prior intimation as per para 2 (i) of Circular No. 14/14/2014-GST dated 6-11-2017. The adjudicating authority vide impugned order rejected the claim on the grounds that the procedure as per para 2 (i) of Circular No. 14/14/2017-GST dated 6-11-2017 have not been followed as mentioned in RFD 08 and also no reply has been received or allotted PH has been attended.
3. Being aggrieved the appellant filed the present appeal on the following grounds:
  - i. The impugned order is not proper, legal and sustainable as it was passed in routine and superfluous manner without taking into consideration the facts, precedents and legal aspects of the issue.
  - ii. That the order was passed without granting personal hearing and passed against the principle of natural justice is ex-facie illegal and therefore the same may be quashed and set aside ;
  - iii. As per proviso to sub rule (3) of Rule 92 no application for refund shall be rejected without giving the applicant an opportunity of being heard. Since the order was passed without granting personal hearing and passed against the principle of natural justice, the same suffers from infirmity, is ex-facie illegal and therefore the same may be quashed and set aside. Decisions in the case of M/s. Mohan Electro Castings Ltd reported at 2008 (222) ELT 587 (Commr. Appeal) and M/s. Govan Soma Tandel Vs CC (P) Ahmedabad reported at 2000 (115) ELT 772 (Tri. Ahmedabad) relied.
  - iv. As per Section 54 of CGST Act 2017 read with Rule 89 of CGST Rules, 2017, they had satisfied all the conditions and limitations and also followed the procedures and that there is no allegation that they had not satisfied any of the conditions stipulated in the said Act or Rules.
  - v. That they had complied with all the conditions stipulated under Section 54 of the Act. That the adjudicating authority has given his findings on the trivial issues raised as

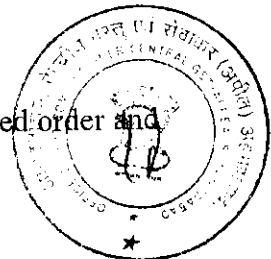


discrepancy which does not have any bearing on conditions stipulated and procedures envisaged under Section 54 and Rule 89. That they had fulfilled all the conditions and procedures of refund sanctioning provisions and hence the impugned order may be quashed and set aside.

- vi. The adjudicating authority has rejected the refund claim on the ground of technical infraction without taking into consideration the vital compliance made by them ; that there is no dispute with regard to payment of tax or export of goods ; that it is not proper to reject the refund claim on the ground of technical lapse. Order of Government of India in the matter of M/s.Barot Export reported at 2006 (203) ELT 321 (GoI) relied.
- vii. The Circular No.14/14/2017-GST dated 6-11-2017 was issued in pursuance to resolve certain difficulties being faced by exporters post GST. The Circular is meant for facilitating the exporter to claim refund inasmuch as the endorsement of tax invoice has been considered as proof of deemed export supplies. Further to co-relate supply of goods by the supplier to the recipient, prior and post supply of intimation for procurement of supplies have been provided in the circular. In the present case the recipient of the export supplies had given intimation for procurement of supplies to the supplier under Form A. Similarly the recipient had also intimated under Form A to their jurisdictional GST officer before supplies were made. As such the procedure of para 2 (1) of the Circular was complied with in so far as recipient of deemed export supplies is concerned. The only lapse remains is with respect to intimation for procurement of supplies not given to the jurisdictional GST officer of registered supplier. The said intimation was required to be given by the recipient EOU. However the recipient instead of giving prior intimation to the jurisdictional officer of the appellant has forwarded Form A, the intimation to the appellant. In the normal course recipient forward the intimation to the supplier for onward submission to the jurisdictional officer. However in the present case appellant was under bonafide impression that such intimation might have been given by the recipient. Moreover appellant could not submit the intimation to the jurisdictional officer due to pandemic situation prevailing during the material period. Here it is pertinent to mention that intimation was finally given on 13-7-2020 before the refund claim was lodged. The refund claim was filed on 16-12-2020. Therefore the purpose of verification of supply of goods could have been made before sanctioning refund claim. The very purpose of intimation for procurement of supplies stands satisfied inasmuch as intimation was given to the registered suppliers as well as to the jurisdictional GST officer of the recipient. Moreover the intimation to the jurisdictional GST officer in charge of registered supplier was also given by the appellant before refund claim was lodged. In the circumstance when the core aspects in sanctioning the refund viz. payment of tax and deemed export of goods and also all the provisions have been complied with the rejection of refund claim on minor lapse is not proper and just.



- viii. That Hon'ble appellate authorities and Hon'ble Courts have consistently been holding the view that substantive benefit cannot be denied merely on account of minor procedural infraction. Judgment of Hon'ble Supreme Court in the case of M/s.Manglore Chemicals and Fertilizers Ltd Vs Deputy Commissioner reported in 1991 (55) ELT 437 (SC) and Hon'ble Tribunal in the case of M/s.Skoda Auto India Pvt ltd Vs CCE Aurangabad reported at 2020 (253) ELT 153 (Tri.Mumbai) relied.
- ix. That intimation for procurement of supplies is purely a procedural requirement and technical nature and meant for administrative purpose. In the present case the reason for rejection was shown as 'other' and hence inadmissibility is not substantive and would be non substantive error or omission. It is well settled that export related refunds should not be rejected due to minor procedural lapse or non substantive errors or omission which can be rectified subsequently. They had complied with all the conditions and provisions of Section 54 and Rule 89 and as such non submission of prior intimation of procurement of supplies to the jurisdictional GST office in charge of registered supplier cannot be viewed a substantive requirement for grant of refund. . Judgment of Hon'ble Supreme Court in the case of M/s.Manglore Chemicals and Fertilizers Ltd Vs Deputy Commissioner reported in 1991 (55) ELT 437 (SC) relied.
- x. Refund has been rejected merely on the ground of minor procedural lapse. It is well settled Law that Circular is not binding on an assessee although the same is binding on Department. Judgment of Hon'ble Supreme Court in the case of CC, Calcutta Vs IOC Ltd reported in 2004 (165) ELT 257 (SC) and in the case of CCE, Bhopal Vs Minwool Rock Fibres Ltd reported in 2012 (278) ELT 581 (SC) relied.
- xi. As per judgment of Hon'ble Supreme Court in the case of Sandur Micro Circuits Ltd Vs CCE Belgaum reported at 2008 (229) ELT 641 (SC) circular cannot take away the effect of Notifications statutorily issued.
- xii. That refund claim cannot be rejected on the basis of a Circular when statutory provisions have been complied with. Decision of Hon'ble Tribunal in the case of CC, Cochin Vs KVN Impex Pvt.ltd reported at 2016 (339) ELT 117 (Tri.Bang) and M/s.JD Engineering Vs CCE Delhi I reported at 2016 (343) ELT 632 (Tri. Delhi) relied.
- xiii. The recipient of deemed export supplies though intimated procurement of supplies to the supplier under Form A and also intimate under Form A to their jurisdictional GST Officer, however could not give prior intimation to the jurisdictional GST officer of the appellant due to pandemic of Covid 19.
- xiv. In view of above submissions the appellant requested to set aside the impugned order and grant them consequential relief.



4. Personal hearing was held on dated 5-1-2022. Shri P.G.Mehta, Authorized representative appeared on behalf of the appellant on virtual mode. He has asked for seven working days to submit additional information/details which have been duly granted. Accordingly he via email dated 10-1-2022 submitted copy of prior intimation letters filed by them before jurisdictional GST officer.

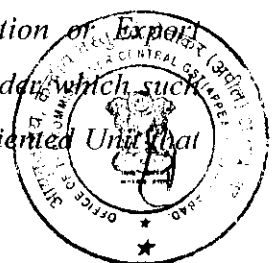
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. In this case the claim was rejected only on the ground of non observance of procedure as per para 2(i) of Circular No.14/14/2017-GST dated 6-11-2017. As per said Circular procedure for procurement of supplies of goods from DTA by Export Oriented Unit/ Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export benefits under section 147 of CGST Act, 2017 EHTP/STP was prescribed. In para 2 (i) it was prescribed that;

*The recipient EOU / EHTP / STP / BTP unit shall give prior intimation in a prescribed proforma in "Form-A" (appended herewith) bearing a running serial number containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier before such deemed export supplies are made.*

*The said intimation shall be given to – (a) the registered supplier; (b) the jurisdictional GST officer in charge of such registered supplier; and (c) its jurisdictional GST officer.*

6. Apparently the procedure prescribed in para 2 (i) calls for compliance on the part of recipient EOU unit for procuring supply from DTA Unit and not on the part of the supplier of goods. Regarding requirement of such intimation for claim of refund by supplier, I refer to Rule 89 (2) of CGST Rules, 2017 wherein the documents required to be submitted by the claimants for various types of refund is prescribed. I find that under clause (g) of Rule 89 (2) of CGST Rules, for claim of refund on account of deemed export a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf need to be filed by the claimant. Accordingly, vide Notification No.49/2017-CT dated 18-10-2017, for the purpose of Rule 89 (2) (g) of CGST Rules, 2017, the following documents are notified as evidences which are required to be produced by the supplier of deemed export supplies for claiming refund. namely:-

*1) Acknowledgment by the jurisdictional Tax officer of the Advance Authorization holder or Export Promotion Capital Goods Authorization holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorization or Export Promotion Capital Goods Authorization holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.*



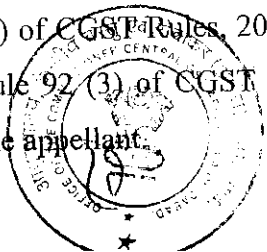
2. An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him and

3. An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

8. In view of above I find that in case of claim for refund on account of deemed export filed by the supplier unit, the documentary evidences prescribed under Notification No.49/2017 only need to be submitted along with refund application. In the subject case there is no dispute regarding non submission of any of the aforesaid prescribed documents by the appellant. It is also not in dispute that the appellant has not supplied the goods to EOU or not paid tax on such supply or that the goods supplied by them were not received by the EOU. Despite the same, the claim was rejected due to non submission of prior intimation which in fact needed for procuring supply of goods from DTA by EOU, which need to be submitted by the recipient EOU. Therefore, so far as claim of refund by supplier is concerned, such prior intimation has no relevance and not statutorily needed with refund application.

9. I further find that in Circular No.14/14/2017-GST dated 6-11-2017 also it was prescribed that after receipt of supplies, EOU has to forward a copy of endorsed tax invoice to the supplier unit. As per CBIC Circular No. 125/44/2019 – GST dated 18-11-2019 the supplier filing refund application for refund of tax paid on deemed export supplies need to upload documents required under Notification No. 49/2017-Central Tax dated 18.10.2017 and Circular No. 14/14/2017-GST dated 06.11.2017. Therefore, document which is envisaged under Notification No.49/2017 and Circular 14/14/2017 for submission by supplier is in fact copy of invoice duly endorsed by EOU and not prior intimation in Form A. I also find that nowhere in any Notification or Circular submission of prior intimation filed by the receipt EOU was made mandatory for claim of refund by the supplier unit. Therefore, I do not find non submission of prior intimation is a justifiable and cogent reason to deny substantive benefit to the appellant. I also refer to Circular No. 37/11/2018-GST F. No.349/47/2017-GST dated the 15th March, 2018, issued by the Board, wherein it was clarified that refunds may not be withheld due to minor procedural lapses or non-substantive errors or omission.

10. Regarding the appellant's contention of non grant of personal hearing before rejecting the refund claim, I find that in the show cause notice issued to the appellant the appellant was directed to furnish reply within fifteen days and to appear for personal hearing on 29-12-2020. It is not brought on record as to whether they sought adjournment or not. However, I find that as per proviso to sub rule (3) of Rule 92 it is prescribed that no application for refund shall be rejected without giving the applicant an opportunity of being heard. In this case, the personal hearing was fixed on 29-12-2020 and the impugned order was passed on 13-1-2020 ie after fifteen days period. In between period no further personal hearing was granted to the appellant in compliance to Rule 92 (3) of CGST Rules, 2017. Therefore, I find that the impugned order was passed in violation of Rule 92 (3) of CGST Rules, 2017 and against the principles of natural justice as contended by the appellant.



10. In view of above discussions I hold that the impugned order passed by the adjudicating authority is not legal and proper inasmuch as the refund was rejected due to reason of non submission of irrelevant and unspecified documents and without granting opportunity of personal hearing. I further find force in the submissions made by the appellant relying on various case laws challenging the impugned order. Accordingly I set aside the impugned order and allow this appeal.

अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।


11. The appeal filed by the appellant stands disposed of in above terms.

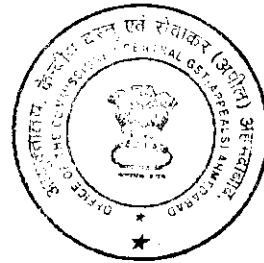
  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested

  
(Sankar Raman B.P.)  
Superintendent  
Central Tax (Appeals),  
Ahmedabad



By RPAID

To,

M/s. Atlas Pharmachem Industries Pvt. Ltd,  
Plot No. 286/287, Phase II,  
GIDC Vatva,  
Ahmedabad 382 445

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division III (Vatva II), Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- ✓ 6) Guard File
- 7) PA file

