



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20240264SW000000F9DC

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTD/215/2023 -APPEAL / 2015 - 2020

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 225 /2023-24

दिनांक Date : **20.02.2024** जारी करने की तारीख Date of Issue : 27.02.2024

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/WS06/Ref-334/Apex/2018-19 dated 26.03.2019 issued by The Assistant Commissioner, Div – VI, CGST Ahmedabad South.

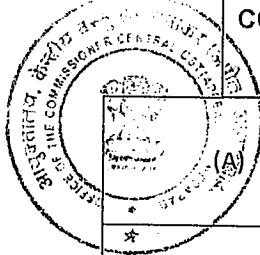
घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant	Respondent
The Assistant Commissioner, Div – VI, CGST Ahmedabad South	M/s. Apex formulation Pvt. Ltd, 3rd Floor, 3-B, Suryarath Building, Panchwati First Lane, Ahmedabad, Ahmedabad, Gujarat, 380006

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.

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(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) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent 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**

This order arises out of revival of an appeal filed by the Assistant Commissioner, CGST, Division-VI, South, Ahmedabad, on behalf of the CGST department (hereinafter referred to as the 'appellant') against Order-in-Original No. CGST/WS06/Ref-334/Apex/2018-19 dated 26.03.2019 issued in Form- RFD-06 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad South, Ahmedabad (hereinafter referred to as 'the adjudicating authority') in the matter of refund claims filed by M/s. Apex Formulation Pvt. Ltd., 3B, 3<sup>rd</sup> Floor, Suryarath Building, Panchvati, First Lane, Ahmedabad-380006 (hereinafter referred to as 'respondent'). The revival of the above appeal was in terms of the order of Hon'ble High Court of Gujarat dated 22.02.2023 in Special Civil Application (SCA) No. 9860 of 2020.

2. Facts of the case in brief are that the respondent are engaged in the manufacture and sale of Medicines and are registered under GST with registration No. 24AABCA64761ZR. As per their course of manufacturing operations they purchase raw materials such as Ibuprofen IP, Ciprofloxacin HCL IP, etc on payment of applicable rate of duty under the GST Act @ 18%. The finished goods cleared/sold by them are cleared on payment of GST @ 12% ad-valorem. Further, the respondent also sells goods to various Exporters on which concessional rate of duty @ 0.1% is applicable in terms of Notification No. 40/2017-CGST (Rate) and Notification No. 41/2017-IGST (Rate) dated 23.10.2017. Thus, the output tax rate of the Finished goods sold by the respondent was lower than the rate of duty on the inputs, therefore, their activity resulted in accumulation of Input Tax Credit (ITC) on account of Inverted Tax Structure.

3. The genesis of the entire issue is that the appellant had filed refund claim of Rs. 8,82,610/- for the month of March-2018 manually on 08.03.2019 as prescribed vide CBIC Circular No. 17/17/2017-GST dated 15.11.2017 on account of refund of accumulated Input Tax Credit (ITC) due to inverted tax structure. The difference in rate of inputs and output was leading to accumulation of ITC. Further they had supplied some goods on concessional rate to merchant exporters. After verification of claim filed by the respondent, the Refund was sanctioned by adjudicating authority vide the impugned order under Sub Section (3) of Section 54 of the CGST Act, 2017.

3.1 During the course of Post Audit of the Refund claim it was observed that, the respondent has submitted copies of invoices issued to exporters, copies of shipping Bills of exporter, Bill of Lading etc. whereas 'name and GSTIN of the respondent' was not mentioned on the shipping bills which is a mandatory requirement as per Notification No. 40/2017 Central Tax (rate) and 41/2017 Central Tax (rate) both dated 23.10.2014. Therefore, it could not be ascertained whether the same goods has been exported which was supplied by the respondent under above notification. Further as per the statement available on file "Input of Row material, packing material and finish goods for the month of March-2018', the respondent has availed the credit of input services amounting to Rs.

58,296/- which cannot be considered admissible as net ITC, as per rule 89(5) of CGST Rules, 2017. Consequently an excess refund of Rs. 53,916/- was also found to be sanctioned. It was also observed that the respondent had not submitted Annexure-A & Statement 1-A along with the refund claim. Thus the Post Audit was of the opinion that the respondent was in-eligible for the Refund of Rs. 08,82,610/- for the month of March, 2018, claimed as accumulated ITC due to inverted tax structure and the same was required to be recovered alongwith interest. As per the above recommendations by the Post Audit of the Refund claim, an appeal was filed before the CGST Appeals, Ahmedabad by the Assistant Commissioner, CGST, Division-VI, South, Ahmedabad, on behalf of the CGST department.

3.2 The said appeal was decided by the Joint Commissioner, CGST Appeals, Ahmedabad vide OIA No.AHM-Exp./JS-001-APP-JC-02-2020-21 dated 04.06.2020, wherein it was pronounced that, "...I find that the adjudicating authority has erroneously sanctioned the excess refund to the respondent and therefore the excess refund amount should be recovered with appropriate interest. Hence, the appeal filed by the appellant is allowed". Accordingly the departmental appeal was allowed by the Appellate authority. Being aggrieved with the appellate order the respondents filed an appeal before the Hon'ble High Court of Gujarat which was admitted as Special Civil Application (SCA) No. 9860 of 2020. The SCA was disposed by the Hon'ble High Court vide order dated 22.03.2023 wherein the Hon'ble Court ruled that :

10. We have heard learned advocates appearing for the respective parties. It is true, that initially, the Exporter to whom the petitioner has sold the goods had not mentioned the name and GST Identification Number of the petitioner. However, the authority granted refund considering the factual aspect of the matter i.e. details about the goods sold by the petitioner to the Exporter and further transferred by the Exporter to the third party. It is also true that subsequently, at the request of the petitioner, correct form was submitted by the Exporter to the authority and, therefore, this aspect was required to be considered by the Appellate Authority which is essentially not done in the present case. Hence, we are of the opinion that the impugned order is required to be quashed and set aside.

11. Accordingly, the present petition stands allowed in terms of prayer 19 (A). The appeal filed by the CGST is revived. It would be open for the petitioner to file additional documents, if any, along with an affidavit in support of its claim of refund before the Appellate Authority. The Appellate Authority shall decide the appeal afresh, without being influenced by the earlier order as well as by this order and decide the appeal after examining all the documents on record and giving an opportunity of hearing to the parties concerned. All issues are kept open before the Appellate Authority and the Appellate Authority shall decide all issues. Rule is made absolute to the aforesaid extent. Direct service is permitted.

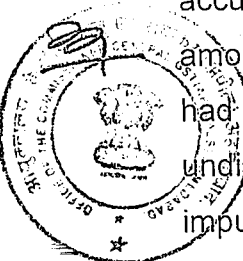
3.3 As per the directives of Hon'ble High Court, Gujarat, the appeal filed by the Assistant Commissioner, CGST, Division-VI, South, Ahmedabad (hereinafter referred to as "the appellant") against RFD-06 Order-in-Original No. CGST/D-VI/GST Ref-334/Apex/SKS/18-19 dated 26.03.2019 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad South, Ahmedabad (hereinafter referred to as "the adjudicating authority") in the matter of refund

claims filed by M /s. Apex Formulation Pvt. Ltd., 3B, 3rd Floor, Suryarath Building, Panchvati, First Lane, Ahmedabad-380006 (hereinafter referred to as "respondent") was revived to be decided afresh.

4. Personal hearing in the case was held on 09.11.2023. Shri Bharat Thakkar, Advocate appeared on behalf of the appellant as Authorized Representative. He submitted additional documents and additional submission as per the order of the Hon'ble High court and reiterated the written submission. He further requested to allow the appeal

5. I have carefully gone through the order of Hon'ble High Court of Gujarat, the grounds of appeal in the departmental appeal revived by the Hon'ble Court, the impugned order and all other records in file. I find that in the issue before me for decisions is whether the Refund amounting to Rs. 08,82,610/- claimed by the respondent and sanctioned vide the impugned order in the facts and circumstances of the case is admissible to the respondents or otherwise.

6. From the documents I find that the respondents are bonafide manufacturers and exporters registered under GST. They are engaged in manufacturing and sale of medicines. During the course of furtherance of business their Manufactured products are sold on payment of Duty/GST @ 12% whereas their inputs are procured on payment of duty/GST @ 18%. On account of such Inverted duty structure Input Tax Credit (ITC) is accumulated with the respondent, and they had filed a Refund claim of accumulated ITC amounting to Rs. 08,82,610/- for the month of March, 2018. The adjudicating authority had verified the said claim and sanctioned it vide the impugned order. These facts are undisputed. However, the CGST department had preferred an appeal against the impugned order on following grounds:

- 
- (i) The respondents have claimed refund of accumulated ITC arising out of goods sold to Merchant Exporters under concessional rate of duty @ 0.5% and 0.1%. The copies of Invoices issued to the Merchant Exporter by the respondents as well as the Shipping Bills/Bill of lading do not reflect the Name/GSTIN of the respondent. Therefore the identity of the goods supplied by the respondent cannot be established with the Goods actually exported by the Exporter. Hence, their clearances are in violation of the conditions stipulated vide Notification No. 40/2017-Central Tax (rate) and/or Notification No.41/2017-Central Tax (rate) both dated 23.10.2017.
  - (ii) As per the statement of "Input of Raw Material, packing material and Finished goods for the month of March-2018" submitted by the respondents, they have availed credit of Input services amounting to Rs. 58,296/-. The said amount is not admissible as net ITC as per Rule 89(5) of the CGST Rules, 2017. This has resulted in sanctioning of excess Refund amounting to Rs. 53,916/-.

- (iii) The respondents have not submitted Annexure-A and Statement 1-A alongwith the Refund Claim. As these documents are mandatory in terms of CBIC Circular No. 59/33/2018-GST dated 04.09.2017 and vide Section 54(2)(b) of the CGST Act, 2017 respectively.

7. The appellant department have alleged that the respondents have supplied some goods on concessional rate at 0.5% CGST and 0.5% SGST under Notification No.40/2017 and Notification No. 41/2017 both dated 23.10.2017, to the Merchant Exporters M/s Deutsche Labs Inc. and M/s Swiss Exports Pvt.Ltd vide Invoice Number 1206/17-18 dated 06.03.2018; 1283/17-18 dated 19.03.2018 and 1284/17-18 dated 19.03.2018 respectively. However, upon verification of the relevant Shipping Bills and Bill of Lading it was observed that 'Name and GSTIN Number' of the respondent was not found mentioned on them which is mandatory as per the prevailing regulations.

7.1 I find it relevant to refer to prevailing regulations/clarification issued by the CGST Department during the relevant period pertaining to Export related Refund issues. It is observed that during the relevant period all Export related Refund issues were governed by 'Circular No. 37/11/2018-GST dated 15.03.2018'. Relevant portions of Para-13 of the said Circular is reproduced below :

*13. Supplies to Merchant Exporters: Notification No. 40/2017 – Central Tax (Rate), dated 23rd October 2017 and notification No. 41/2017 – Integrated Tax (Rate) dated 23<sup>rd</sup> October 2017 provide for supplies for exports at a concessional rate of 0.05% and 0.1% respectively, subject to certain conditions specified in the said notifications.*

*13.1 It is clarified that the benefit of supplies at concessional rate is subject to certain conditions and the said benefit is optional. The option may or may not be availed by the supplier and / or the recipient and the goods may be procured at the normal applicable tax rate.*

*13.2 It is also clarified that the exporter will be eligible to take credit of the tax @ 0.05% /0.1% paid by him. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act. It may also be noted that the exporter of such goods can export the goods only under LUT / bond and cannot export on payment of integrated tax. In this connection, notification No. 3/2018-Central Tax, dated 23.01.2018 may be referred.*

7.2 Examining the above legal provisions with the facts and circumstances of the case I find that the Refund claimed by the respondent for the period March-2018 would stand governed vide Notification No. 40/2017 – Central Tax (Rate), dated 23rd October 2017 and Notification No. 41/2017 – Integrated Tax (Rate) dated 23<sup>rd</sup> October 2017. It would be pertinent to refer to the relevant portions of both these notifications and the same are reproduced below :

Government of India  
Ministry of Finance  
Department of Revenue

**Notification No. 40/2017-Central Tax (Rate)**  
**New Delhi, the 23rd October, 2017**

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as "the said Act"), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of taxable goods (hereafter in this notification referred to as "the said goods") by a registered supplier to a registered recipient for export, from so much of the central tax leviable thereon under section 9 of the said Act, as is in excess of the amount calculated at the rate of 0.05 per cent., subject to fulfilment of the following conditions, namely: -

...

(iii) the registered recipient shall indicate the Goods and Services Tax Identification Number of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;

...

7.3 Relevant portion of Notification No.41/2017-Integrated Tax (Rate) dated 23.10.2017 is reproduced below :

Government of India  
Ministry of Finance  
Department of Revenue

**Notification No. 41/2017--Integrated Tax (Rate)**  
**New Delhi, the 23rd October, 2017**

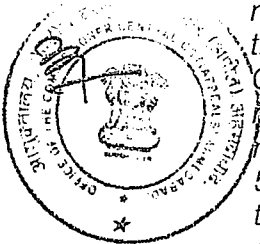
G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), (hereafter in this notification referred to as "the said Act"), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the inter-State supply of taxable goods (hereafter in this notification referred to as "the said goods") by a registered supplier to a registered recipient for export, from so much of the integrated tax leviable thereon under section 5 of the Integrated Good and Services Tax Act, 2017 (13 of 2017), as is in excess of the amount calculated at the rate of 0.1 per cent., subject to fulfilment of the following conditions, namely: -

...

(iii) the registered recipient shall indicate the Goods and Services Tax Identification Number of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;

...

7.4 It is also observed that Para- vii of the Grounds of appeal of the Review Order was based on the above legal provisions prevailing during the relevant period. In this regard the respondent has submitted various documents in the form of Amendment Orders issued by Customs authorities at the Port of Export vide which the relevant Shipping Bills were amended to incorporate the Name and GSTIN number of the respondent. The documents submitted by the respondent were co-related with the relevant Invoice and Shipping Bills and the same is tabulated below :



Sr. No.	Name of Merchant Exporter	Invoice No. of Apex.	Invoice Date of Apex	Relevant Shipping Bill No.	S/B Date	Details of S/B Amendment Order	S/B Amendment order Date
1	DEUTSCHE LABS INC.	1283/17-18	19.03.2018	5441067	08-06-2018	SB NO5441067/08.06.2020	31.07.2020
2	SWISS EXPORTS PVT. LTD.	1284/17-18	19.03.2018	5601776	16.06.2018	VIII/98-151/Cus/AC C/Amend/2016	01.02.2020
3	DEUTSCHE LABS INC.	1206/17-18	06.03.2018	3348141	08.03.2018	VIII/98-152/Cus/AC C/Amend/2016	01.02.2020
4	DEUTSCHE LABS INC.	1206/17-18	06.03.2018	3348147	08.03.2018	VIII/98-153/Cus/AC C/Amend/2016	01.02.2020

7.5 I find that the above Table covers all the Three (03) Invoice numbers of the respondents mentioned at Para-(i) of the grounds of appeal of the appellant department. I also find that as per the amendment certificates issued by the Customs authorities in respect of the relevant Shipping Bills, the name and GSTIN number of the respondents were incorporated as Supplier of Goods in the Export documents. The certificates also specify that since the said amendments could not be carried out online, they were done in physical form. It is also observed that in terms of the above amendments the requirement mandated vide Notification No. 40/2017 – Central Tax (Rate), dated 23rd October 2017 and Notification No. 41/2017 – Integrated Tax (Rate) dated 23rd October 2017 stands fulfilled. In this regard, I am of the considered opinion that the respondent are eligible for Refund of accumulated ITC in respect of the Three (03) Invoices issued to the Merchant Exporters - M/s Deutsche Labs Inc. and M/s Swiss Exports Pvt.Ltd vide Invoice Number 1206/17-18 dated 06.03.2018; 1283/17-18 dated 19.03.2018 and 1284/17-18 dated 19.03.2018.

8. I further find that the respondents have pleaded before the Hon'ble High Court of Gujarat and confirmed that they are bonafidely ready to pay the credit amounting to Rs.53,916/- back to the department. As per further documents submitted by the respondent, I find that they have paid an amount of Rs.53,916/- on 09.02.2024 alongwith interest amounting to Rs. 25,880/-. As a result, the ground of appeal of the appellant department regarding grant of excess refund to the respondent stands justified as the respondent have paid back the excess credit availed by them along with leviable Interest.

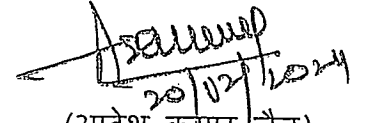
9. Further, in respect of the allegation of the appellant department that the respondents have not submitted Annexure-A and Statement 1A alongwith their refund claim application, the respondents have submitted that they had uploaded their Refund Application in Form-RFD-01 alongwith Statement-1A and Annexure-A as these are inherent mandatory documents in the system and the system would not accept any Refund application without these mandated documents. They have also argued that they have not received any Deficiency Memo in respect of their said Refund application. Upon



referring back to the system of Filing of Online Refund in Form-RFD-01 under CGST, I find force in the above argument of the respondent and find that the above ground raised by the appellant department is devoid of merit.

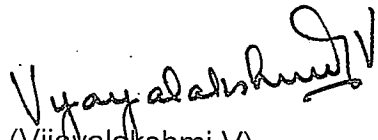
10. In view of the above discussions, I am of the considered view that the documents produced by the respondents clearly establish the fact that they have complied to the grounds of appeal raised by the appellant department and are therefore eligible for Refund of accumulated Input Tax Credit amounting to Rs. 08,82,610/-. Accordingly, the appeal filed by the appellant department is rejected.

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

  
20/02/2024  
(आदेश कुमार जैन)  
संयुक्त आयुक्त (अपील्स)

Date : .02.2024

Attested

  
(Vijayalakshmi V)  
Superintendent (Appeals),  
CGST, Ahmedabad



Appellant: The Assistant Commissioner

Respondent: M/s. Apex Formulation Pvt. Ltd.,  
3B, 3<sup>rd</sup> Floor, Suryarath Building,  
Panchvati, First Lane,  
Ahmedabad-380006.

Copy to:

- (1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- (2) The Pr. Commissioner, Central GST, Ahmedabad South.
- (3) The Assistant Commissioner, CGST, Division-VI, South, Ahmedabad.
- (4) The Assistant Commissioner(RRA), CGST, Division-VI, South, Ahmedabad.
- (5) The Asstt. Commissioner(System), Central GST HQ, Ahmedabad.  
(for uploading the OIA on website)
- ~~(6)~~ Guard file
- (7) P.A. file.

