केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

सत्यमेव जयते

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015

☎: 079-26305065

टेलेफैक्स : 079 - 26305136

15647 to 15667

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/103/Ahd-II/2017-18
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-339-2017-18**
दिनाँक Date : **13-02-2018** जारी करने की तारीख Date of Issue 17/3/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **SD-02/REF-321/VIP/2016-17** दिनाँक: **13/04/2017** issued by Asstt. Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Intas Pharmaceuticals Ltd.
Ahmedabad

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 a 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.

(b) 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.

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

... 2 ...

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या नाल 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।

(b) 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.

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

(c) 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 डयूटी 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।

(d) 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 भीत्र 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 ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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.

(6) 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)* 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

M/s. Intas Pharmaceuticals Limited, 2nd floor, Chinubhai Centre, Off Nehru Bridge, Ashram Road, Ahmedabad *(hereinafter referred to as the 'appellants')* have filed the present appeals against the following Orders-in-Original *(hereinafter referred to as 'impugned orders')* passed by the Assistant Commissioner, Division II, Service Tax Commissionerate, Ahmedabad *(hereinafter referred to as 'adjudicating authority')*;

Sr. No.	Order No. & date	Appeal No.	Period Covered	Amount of refund claimed (₹)	Amount rejected (₹)
1	SD-02/REF-321/VIP/2016-17 dated: 13.04.2017	V2(ST)103/A-II/2017-18	Jan 2016 to March 2016	38,75,611/-	38,75,611/-
2	SD-02/REF-65/VIP/2017-18 dated: 21.06.2017	V2(STC)28/North / Appeals/17-18	Apr 2016 to June 2016	93,01,588/-	93,01,588/-
3	SD-02/REF-64/VIP/2017-18 dated: 21.06.2017	V2(STC)29/North / Appeals/17-18	July 2016 to Sept 2016	2,38,14,544/-	2,38,14,544/-
	Total			**3,69,91,743/-**	**3,69,91,743/-**

2. The facts of the case, in brief, are that the appellants are registered with Service Tax department and holding Service Tax Registration No. AAAC15120LST001. The appellants had filed refund claims for the total amount of Rs. 3,69,91,743/- under notification No. 12/2013-ST dated 1.7.2013 for the period of Jan 2016 to Sept 2016, as detailed above.

3. On scrutiny of the refund claims, the department noticed some discrepancies in their refund claims and show cause notices were issued to the appellants. The show cause notices were adjudicated vide the above mentioned impugned orders wherein the adjudicating authority rejected the refund claims mainly on the following grounds:

a) the appellants had violated the condition of para 3(1) of the notification and did not obtain necessary permission for utilization of certain services i.e. other than 119 for authorized operations as per para 3(1) of notification ibid;

b) the appellants failed to prove from the invoices that whether the said services were used exclusively for SEZ operations or not;

c) it was difficult to ascertain that they had followed the principle of distribution of service tax paid in respect of common services as per Rule 7 of the CCR '04;

d) the statement of ISD invoices issued during the period but the same is not tallying with the relevant period of refund claim in the ST-3.

e) the claimant has submitted the list of challans but have not submitted the input invoices with their claims hence it is difficult to ascertain that service tax is paid or otherwise;

f) in r/o refund claim for the period of Jan 2016 to March 2016:

(i) in ISD invoices, the credit is received in the name of Matoda Unit, where as the refund is filed by the SEZ unit of the appellants;

(ii) some challans mentioned at Sr. No. 2 to 5, 9 to 14 in table 1 and Sr. No. 62 to 1867 in Table II of the Show Cause Notice are issued before expiry of one year from the date of filing i.e. 30.12.2016 and appears to be hit by the limitation of time barred as per section 11 B of the Central Excise Act, 1944 and point 3(III)(e) of the Notification No. 12/2013-ST.

4. Feeling aggrieved, the appellants have filed these appeals against the rejection of the refund claims, on the grounds *which are inter alia mentioned* that:

a) the appellants had filed their refund claims in terms of Notification No. 12/2013 ST dated 01/07/2013 for Service Tax paid on specified services received by their unit in SEZ and used for the authorized operations.

b) the input service tax pertaining to input services which were directly attributable to the SEZ unit, has been fully distributed to the said SEZ unit.

c) the input service tax on input services common for both SEZ unit and units in their DTA(i.e. on input services which are not exclusively used for the SEZ unit) has been distributed to all the units(including the SEZ unit) in the ratio of their turnover.

d) the head office of the appellants is registered as an ISD;

e) the appellants as an ISD distributed the credit of input service to all its units in compliance to Rule 7(d) of the CCR '04;

f) since the input services were consumed for the SEZ unit, they filed a refund claim under notification No. 12/2013-ST dated 1.7.2013;

g) that the impugned OIO is a non speaking order, passed in violation of principles of equity, fair play and natural justice;

h) that as per para 3(1) of notification ibid, no condition is cast on the appellant to get the approval to utilize the services for authorized operations;

i) that the appellant have produced the list of approved services for the authorized operations at SEZ; that the services availed by SEZ can be tallied with the list of services approved by the authority;

j) that the credit was distributed considering the turnover of the previous FY;

k) that all the ISD invoices for distribution of proportionate credit to SEZ along with the challans are placed on record;

l) the finding, that the appellants have submitted a statement of ISD invoices did not tally with the relevant period of refund claims, is baseless and devoid of legal merits; the statement tallies exactly with the returns;

m) that the services rendered by the appellants are exempted under SEZ Act;

n) that the services rendered by the appellant to the SEZ were otherwise exempt & hence they were not liable to pay service tax;

o) in r/o refund claim for the period of Jan 2016 to March 2016, the adjudicating authority found that some challans mentioned at Sr. No. 2 to 5, 9 to 14 in table 1 and Sr. No. 62 to 1867 are hit by the limitation of time barred; the condition no. 3(III)9e) of the Notification no. 12/2013 ST also empowers the adjudicating authority to grant the refund claim filed even beyond a period of one year as discretion.

5. Personal hearing in the matter was held on 31.01.2018 wherein Ms. Madhu Jain Advocate, appeared on behalf of the appellant and reiterated the contents of appeal memorandum. He also referred the earlier issued O-I-A No. AHM-Excus-001-APP-214-17-18 dated 26.12.2017 on the similar issue.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I find that issue to be decided is whether the appellants are eligible for refund or otherwise.

7. I have in para 3, *supra*, briefly mentioned the various grounds on which the adjudicating authority rejected the refund. I find that the adjudicating authority has held against the appellants that they had violated the condition stipulated in para 3(1) of the notification, *ibid.* Para 3(1) of notification No. 12/2013-ST dated 1.7.2013, states as follows:

> *"3. This exemption shall be given effect to in the following manner :*
> *(I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax."*

I find that the allegation against the appellants is that they had failed to get necessary permission for utilization of certain services i.e. other than 119 for authorized operations as per para 3(1) of notification *ibid.* The appellants' contention is that the Development Commissioner, SEZ, had approved certain input services as the specified services in the authorized operations of the SEZ; that para 3(1) of the notification does not cast any such condition on the SEZ to get the approval to utilize the services for authorized operations. I agree with the contention of the appellants in this regard. The finding of the adjudicating authority that the appellants failed to get necessary permission for utilization of services, is not legally tenable.

7.2. The adjudicating authority has held against the appellants that it was difficult to ascertain that they had followed the principle of distribution of service

tax paid in respect of common services as per Rule 7 of the CCR '04. The appellants' contention is that the credit was distributed in the current financial year and therefore, for distribution purpose the turnover of the preceding financial year was considered. Now, Rule 7 of the CCR '04, states as follows:[relevant extracts]

> ***Rule 7. Manner of distribution of credit by input service distributor.*** — *The input service distributor shall distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or unit providing output service or an outsourced manufacturing units, as defined in Explanation 4, subject to the following conditions, namely :—*
> *(a).....;*
> *(b).....;*
> *(c).....;*
> *(d) The credit of service tax attributable as input service to all the units shall be distributed to all the units pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all the units, which are operational in the current year, during the said relevant period;*
> ***Explanation 2.*** *- For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5:*
> ***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 maybe, 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.*
>
> ***Rule 5. Refund of CENVAT Credit.***
>
> *(E) "Total turnover" means sum total of the value of -*
> *(a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;*
> *(b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and*
> *(c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.*

On going through the appellants' contention I find that they have followed the procedure as stipulated under Rule 7 of the CCR '04. The adjudicating authority's finding in this regard appears vague as he has not pointed out as to what was wrong in the claim of the appellants or as to how they have wrongly distributed the CENVAT credit to their various units in respect of the service tax paid on the input service. To this extent, I find the impugned orders to be non speaking orders.

7.3. The adjudicating authority has held against the appellants that the appellants failed to prove from the invoices that whether the said services were used exclusively for SEZ operations or not. The appellants have contested this by stating in the grounds of appeal that the input service tax pertaining to input services which were directly attributable to the SEZ unit, has been fully distributed to the said SEZ unit; and the input service tax on input services common for both SEZ unit and units in their DTA (i.e. on input services which are not exclusively

used for the SEZ unit) has been distributed to all the units(including the SEZ unit) in the ration of their turnover.

7.4. The adjudicating authority has held against the appellants that the statement of ISD invoices, issued during the period is not tallying with the relevant period of refund claim in the ST-3 returns. The appellants have contested this by stating in the grounds of appeal that the finding is baseless and devoid of legal merits; that the statement of ISD invoices along with ST-3 returns and the figures for the period are exactly tallying. The finding of the adjudicating authority and the claim of the appellants, seem contradictory. I find that the matter needs to be re-examined and re-looked into by the adjudicating authority in the interest of justice.

7.5. The adjudicating authority has held against the appellants that the appellants have submitted the list of challans but have not submitted the input invoices with their claims, hence it is difficult to ascertain whether service tax is paid or otherwise. The appellants, however, states that they have submitted the copy of invoices issued to the appellants by ISD along with copies of the challans. The finding of the adjudicating authority and the claim of the appellants, seems contradictory. However, non submission of invoice does not appear to be a proper ground for rejection as the adjudicating authority could have obtained it from the appellants.

7.6. The adjudicating authority has held against the appellants that the appellants in r/o refund claim for the period of Jan 2016 to March 2016:

(i) <u>In ISD invoices, the credit is received in the name of Matoda Unit, where as the refund is filed by the SEZ unit of the appellants.</u>

The appellants have contested this by stating in the grounds of appeal that all ISD invoices, for which refund claim has been put, have been issued in the name of SEZ unit. However, there are some invoices of input service providers which provide services at their Matoda Unit(in DTA) as well as at their Duty Paid Godown(DPG) located in/around Matoda. They raise a combined bill in the name of Matoda unit in respect of services rendered by them at both these locations(Matoda unit and DPG). Also DPG stores goods brought from their multiple manufacturing units and hence the appellants have distributed the input service tax attributed to service provided at Matoda Unit wholly to Matoda unit and the input service tax attributed to service provided at DPG to all the multiple units in the ratio of their turnover. Thus there may be some invoices which will be in the name of Matoda unit(but also including service provided to DPG) but appellants have claimed refund only to the extent of the share of SEZ unit in the input service tax attributable to DPG.

The finding of the adjudicating authority and the claim of the appellants, seem contradictory. I find that the appellants should be given one chance to substantiate their claims by producing all the relevant documents in support of their claim before the adjudicating authority.

(ii) some challans mentioned at Sr. No. 2 to 5, 9 to 14 in table 1 and Sr. No. 62 to 1867 in Table II of the Show Cause Notice are issued before expiry of one year from the date of filing i.e. 30.12.2016 and appears to be hit by the limitation of time barred as per section 11 B of the Central Excise Act, 1944 and point 3(III)(e) of the Notification No. 12/2013-ST.

The appellants have contested this by stating in the grounds of appeal that section 11B states that any claim of refund should be filed within one year from the relevant date. Further, the condition no. 3(III)(e) of the Notification no. 12/2013 ST also empowers the adjudicating authority to grant the refund claim filed even beyond a period of one year as discretion. The refund claim is filed by the SEZ unit on the basis of ISD invoices issued to it. Therefore, for SEZ unit, the refund claim can be filed within one year from the date of invoice of ISD. The ISD invoices have been issued on Dt. 11/01/2016 in the present case and the SEZ unit of the appellants had filed the refund claim on Dt. 05/01/2017. The refund claim has been filed within one year from the receipt of ISD invoices. Therefore, the refund claim was filed within the time prescribed under section 11 B as well as the Notification no. 12/2013-ST.

I find that the appellants should be given one chance to substantiate their claims by producing all the relevant documents in support of their claim before the adjudicating authority. The matter needs to be re-examined and re-looked into by the adjudicating authority in the interest of justice.

8. In view of the facts and discussion herein above, I find that the adjudicating authority has rejected the refund claims without going into the real depth of the matter and without any proper findings. In case there was any query, requirement of further documents, etc., it could have been obtained from the appellants, more so since the Hon'ble High Court of Bombay in the case of Madhav Steel [2016(337)ELT 518], on the issue of procedural infractions, has held as follows:

> ***14.*** *It is submitted that the respondent No. 2 failed to appreciate that the petitioners have successfully established the exact co-relation between the goods which were manufactured and cleared on payment of central excise duty and the goods which were exported. The respondents failed to appreciate that the core aspect or fundamental requirement for rebate is manufacture and subsequent export of the goods. As long as this requirement is met, other procedural deviations can be condoned. The procedure has been prescribed to facilitate verification of substantive requirements. As per the law laid down by the Hon'ble Supreme Court, substantive benefit cannot be denied for procedural lapses. Procedural infractions are to be condoned if exports have actually taken place.*

9. As already stated, the adjudicating authority has rejected the refund claims without going into the real depth of the matter and without any proper findings, more so since the appellants are stating that [a] the distribution of the CENVAT credit was done as per Rule 7 of the CCR '04; [b] all the documents were provided to the adjudicating authroity; and [c] order in parts cannot be termed as a speaking order, as appropriate findings are not given, it would be in the interest of justice is the matter is remanded back to the adjudicating authority to pass a fresh order keeping in mind the observations made above. In the meantime, the appellants are directed to provide all the documents, etc. not provided till date, if any, to the adjudicating authority. The appellants, needless to state, will cooperate with the adjudicating authority, in case further documents, etc. are called for.

10. In view of the foregoing, the impugned orders are set aside and the matter is remanded back to the adjudicating authority. While remanding the case to the adjudicating authority, reliance is placed on the case of Associated Hotel Limited [2015(37) STR 723 (Guj.)].

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

11. The appeals filed by the appellants stands disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स)

Attested

(Vinod Lukose)
Superintendent (Appeals)
Central Tax, Ahmedabad

BY SPEED POST TO:

M/s. Intas Pharmaceuticals Limited,
2nd floor, Chinubhai Centre,
Off Nehru Bridge,
Ashram Road, Ahmedabad.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone.
2. The Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Deputy/Assistant Commissioner, Central Tax, Division VI, Ahmedabad South.
4. The Additional Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.
6. P.A.