



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
Phone: 079-26305065 Fax: 079-26305136  
E-Mail : commrappl1-cexamd@nic.in

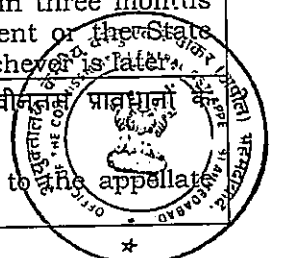


**By Regd. Post**

DIN NO. : 20220364SW00000279788

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/324&325/2021-APPEAL/6162
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-101&102/2021-22 and 22.03.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	22.03.2022
(ङ)	Arising out of FORM-GST-RFD-06 (i) Order-In-Original No. ZO2410200321644 dated 27.10.2020 (ii) Order-In-Original No. ZO2410200321600 dated 27.10.2020 issued by The The Assistant Commissioner, CGST & CE, Division-VI (S G Highway West), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Baxter Pharmaceuticals India Pvt. Ltd. (GSTIN - 24AACCC6252B1Z8) Address:- Vasana-Chacharwadi, Sanand, Ahmedabad, Gujarat-382213

(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) 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****Brief Facts of the Case :**

The following appeals have been filed by **M/s. Baxter Pharmaceuticals India Pvt. Ltd.**, Baxter Ahmedabad Head Office, Ramdas Road, Nr. Parimal Railway Crossing, Ahmedabad - 380054 (hereinafter referred as '*appellant*') against RFD-06 Orders (hereinafter referred as '*impugned orders*') passed by the Assistant Commissioner, CGST & C. Ex., Division - VI - S G Highway West, Ahmedabad North (hereinafter referred as '*adjudicating authority*').

Sr. No.	Appeal No. & Date	RFD-06 Order No. & Date	Amount of Refund considered as Inadmissible
1	GAPPL/ADC/GSTP/324/2021- APPEAL Dated 27.01.2021	ZO2410200321644 Dated 27.10.2020	Rs.3,71,56,641/-
2	GAPPL/ADC/GSTP/325/2021- APPEAL Dated 27.01.2021	ZO2410200321600 Dated 27.10.2020	Rs.18,16,404/-

**2(i).** The '*appellant*' is holding GSTIN No.24AACCC6252B1Z8. As per the statement of facts mentioned in the appeal, the appellant had filed refund applications in the form GST-RFD-01 in respect of Input Tax Credit accumulated on account of export of goods / services rendered without payment of Tax. The details of refund applications so filed by *appellant* and subsequently considered inadmissible by the *adjudicating authority* is as under :

Refund Application under form RFD-01			Amount of Refund considered as Inadmissible
ARN No.	Period	Refund claimed (Integrated + Central + State Tax)	
AA2409200329755 / 10.09.20	January' 2020	6,93,65,325	3,71,56,641 (Integrated Tax)
AA2408200810699 / 27.08.20	March' 2020	4,28,89,605	18,16,404 (Integrated + Central Tax)

**2(ii).** The refund claims were preferred in terms of Section 54(3) of the CGST Act, 2017. The *appellant* has further submitted that

- SCNs were issued to them for rejection of refund of Rs.3,71,56,641/- & Rs.18,16,404/- on the ground mentioned as "Other".
- It is note-worthy that no further explanation nor reasoning were provided in the SCNs requiring the Appellant for showing cause against rejection of refund claims.
- In response to both the SCNs the appellant vide letter dated 16.10.2020 asked for further time to prepare their reply considering

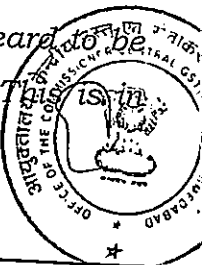


unprecedented situation that arose due to the nationwide COVID-19 pandemic resulting into limited access to physical documentation. The appellant also requested for further time stating that they were caught up in e-invoicing, e-way bill implementation and GST audit for F.Y. 2018-19.

- However, despite filing such letter before the Refund Processing Officer seeking further time to submit reply, to utter shock final refund orders in the Form of GST RFD-06 both dated 27.10.2020 were passed by the Officer within barely 10 days of filing the letter.
- Vide said refund orders, out of the total refund claims, refund amounting to Rs.3,71,56,641/- & Rs.18,16,404/- were rejected by the Officer without assigning any cognate or valid reason.
- Being distressed against such refund rejection orders, vide letter dated 05.11.2020, highlighted the fact that they were unable to decipher the actual reasons for purported rejection of refund considering the SCN merely stated the reason as "Other".
- Therefore, being aggrieved by the impugned orders blatantly rejecting valid refund claims without assigning any reasons, filed the present appeal.

**2(iii).** The appellant has filed the present appeals on the basis of grounds of appeals as under :

- The impugned refund orders has been passed in violation of principles of natural justice and thus required to be set aside.
- At the very outset it is submitted that the reasons for rejection of refund mentioned as "Other". There is no detailed orders highlighting explanations or reasons on the basis of which said refunds has been rejected. Therefore, it is submitted that non-speaking orders has been issued wherein rightful refunds has been disallowed in the absence of valid elucidations.
- Thus, in absence of issuance of speaking, reasoned and well detailed orders, the refund orders so issued does not hold good and accordingly, refund claims should not be denied.
- In support of this contention, places reliance on the decision of Hon'ble Supreme Court in the case of M/s. Steel Authority of India Ltd. V/s. Sales Tax Officer, Rourkela-I Circle and Ors. [(2008)9SC C 407].
- Relevant provisions of law (Act and Rules) which provide for such rejection are also not stated in the orders. Therefore, impugned orders deserves to be set aside on this ground itself.
- Principles of natural justice require an opportunity of being heard to be afforded to the assessee before issuance of any final order. The



line with the Latin maxim of 'Audi Alteram Partem' which states that 'no person shall be condemned unheard'.

- In the present cases, firstly, the impugned SCNs asking the appellant to show cause against rejection of refunds were inconclusive to the extent that it failed to show the allegations that have been leveled against the appellant on the basis of which the refunds are proposed to be rejected. Secondly, and majorly, the Appellant filed Letters seeking further time to produce their Reply considering that the Appellant themselves were in the midst of deciphering the actual reasons for probable rejection of refunds, when in fact the onus lies upon the revenue to sufficiently lay out the charges against the assessee. Despite filing such letter, within less than a fortnight and without providing any opportunity of being heard in person, the Refund Processing Officer unilaterally proceeded to pass adverse orders rejecting refunds due to the appellant.
- In doing so, the Refund Processing Officer has shown complete disregard for principles of natural justice which form the very basis of the entire justice system. An opportunity of being heard should be real, reasonable and effective. The same should not be for name sake. It should not be paper opportunity. This was so held in CIT Vs. Panna Devi Saraogi [1970] 78 ITR 728 (Cal.). Thus, in the absence of adhering to the principles of natural justice, the refund order sanctioning only a portion of the refund claimed by the Appellant, does not hold good.
- Considering the above, it is prayed that the refund claim amounting to Rs.3,71,56,641/- and Rs.18,16,404/- should be sanctioned and the refund orders rejecting such refund should be set aside to such extent.

### **Personal Hearing :**

3. Personal Hearing in the matter was through virtual mode held on 16.12.2021. Shri Amit Ahir, Authorized Representative appeared on behalf of the 'Appellant'. During P.H. he has reiterated the submissions made by them till date to defend the case.

### **Discussion and Findings :**

4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in both the Appeals Memorandum.

I find that the 'Appellant' had presented the refund applications of the ITC accumulated in the form GST-RFD-01 on account of export of goods / services rendered without payment of Tax. The adjudicating authority has allowed certain amount of refunds and



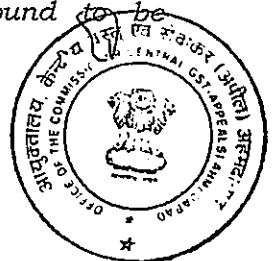
considered certain amount of Refund as inadmissible vide *impugned orders*. I find that the *adjudicating authority* had issued SCNs in both the cases to the *appellant* before rejecting such refund claims. In the SCNs the reasons for rejection of refund claims mentioned as "Other". As regards to filing of reply against the said SCNs by the *appellant* to defend the refund claims, the *appellant* has stated before this appellate authority that they have submitted a letter dated 16.10.2020 to the Refund sanctioning authority. As per said letter they have requested for some time to prepare reply against the said SCNs. However, I find that the *adjudicating authority* has issued the *impugned orders* on 27.10.2020 vide which rejected the refund claims of Rs.3,71,56,641/- & Rs.18,16,404/-. Further, I find that the *appellant* has vide letter dated 05.11.2020 to the *adjudicating authority*, also asked for reasons for rejection of refund claims as in the SCNs the reasons mentioned as "Other" so they are not able to reach at any conclusion. The *appellant* has also requested to provide proper line item and invoice wise detail of the amount rejected. In this regard, neither in the SCNs nor in the *impugned orders* I find any valid or legitimate reasons for rejection of said refund claims.

**4(ii).** Since, no reasons noticed either in SCN or *Impugned Orders* for rejection of refund claims, the concerned jurisdictional GST authority were requested vide letters dated 26.10.2020 & 09.12.2020 by this appellate authority to inform the basis, reasons of rejection of refund claims. In response to said letters the Assistant Commissioner, CGST, Division-VI, Ahmedabad North vide letter F. No. GST-06/04-228/Refund/Misc/2021-22 dated 20.12.2021 has submitted the reply as under :

(i) During the calculation of refund for the month of Mar-20 -

	Export Turnover	Adjusted total Turnover	Net ITC	Refund Amount
By M/s. Baxter	19,43,23,259	20,89,87,518	4,61,26,193	4,28,89,605
By departmental officers	19,43,23,259	21,36,83,402	4,51,65,264	4,10,73,201
Difference				18,16,404

In this month, Adjusted total turnover as per GSTR-1 was found to be Rs.21,36,83,402/- and eligible ITC as per Annexure-B was found to be Rs.4,51,65,264/- resulting deduction of Rs.18,16,404/-



(ii) During the calculation for the month of Jan-20 -

	Export Turnover	Adjusted total Turnover	Net ITC	Refund Amount
By M/s. Baxter	28,48,28,451	29,92,82,489	7,28,85,370	6,93,65,324
By departmental officers	28,48,28,451	30,56,42,318	3,45,62,336	3,22,08,683
Difference				3,71,56,641

In this month, Adjusted total turnover was found to be Rs.30,56,42,318/- and eligible ITC as per Annexure-B was found to be Rs.3,45,62,336/- as some of the invoices are not reflecting in GSTR-2A resulting in deduction of Rs.3,71,56,641/-.

**4(iii).** On going through the above clarification/reply of the department it is observed that the department has rejected the certain amount of refund claims on the ground of mismatch of "Adjusted total Turnover" & "Net ITC". However, I do not find any evidence on record to the effect that said grounds of rejection of refund claims were ever communicated to the *appellant*. So, I do find force in the *appellant's* submission that as the reasons for rejection of refund claims mentioned in SCN as "Other" only, hence they were not able to reach at any conclusion.

**4(iv).** Accordingly, the copy of letter dated 20.12.2021 of the AC, Division - VI, Ahmedabad North was provided to the *appellant* and asked to provide the comments/clarification/submission on the same. The *appellant* vide letter dated 01.03.2022 informed that -

*"the refund amount has been reduced by INR 18,16,404/- stating that the eligible ITC was found to be less as per Annexure B. We would like to submit that we would be in position to justify the input tax credit through documentation and evidence, in case transactions are identified and shared".*

The *appellant* has further informed that -

*"The refund amount has been reduced by INR 3,71,56,641/- stating that the eligible ITC was found to be less as per Annexure B as some of the transactions were not reflecting in GSTR2A. We would like to submit that there were transactions aggregating to tax of INR 3,60,77,768/- which pertained to those on which tax was paid on reverse charge. The said transactions would not have reflected in GSTR2A and hence the rejection to that extent is not appropriate. We have attached herewith Annexure-I, the list of transactions on which tax was paid under reverse charge along with self-invoice for the said transactions.*

*We would like to highlight that reduction of ITC is of INR 3,83,23,034/-. Even if it is assumed out of the said amount INR 3,60,77,768/- pertains to reverse*



charge, even in that case we would need to identify the transaction for balance amount of INR 22,45,266/-.

We would like to submit that we would be in position to justify the input tax credit through documentation and evidence, in case transactions are identified and shared."

As regards to department's contention of mismatch of ITC or Adjusted Total Turnover I find that the *appellant* vide above letter dated 01.03.2022 informed that if particular/specific discrepancies of documents/details is pointed out and shared with them then they would be in a position to justify the same by documents/evidence.

**4(v).** Further, I find that the *appellant* has referred case law of *Steel Authority of India Vs. Sales Tax Officer [(2008) 9 SC C 407]* as well as *CIT Vs. Panna Devi Saraogi [1970] 78 ITR 728 (Cal.)* in connection with not following the principle of natural justice.

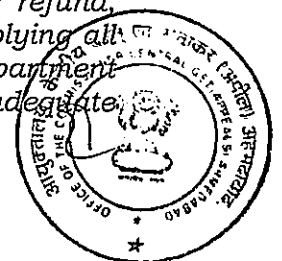
As regards to *appellant's* contention that denial of refund claims based on a silent SCN is violating the principle of natural justice, I have referred the order of Hon'ble High Court of Allahabad passed in the case of "*SAHIBABAD PRINTERS Vs. ADDITIONAL COMMISSIONER OF CGST (APPEALS)*" reported at 2021 (51) G.S.T.L. 301 (All.).

The relevant para of said order is reproduced as under :

2. That facts in brief are that the petitioner claims to be a registered supplier under the GST Act and claims to have done job work on cloth and other suppliers for the period April, 2018 to July, 2018. The petitioner submits that on account of inward supply of inverted rated inputs the petitioner was entitled to refund. As such, he filed an application for refund in Form RFD-01 claiming a refund of Rs. 13,68,758/- under inverted duty structure on the portal for the period April, 2018 to July, 2018. The said application was allotted a number and was dated 24-2-2020. The respondent No. 2 on 19-3-2020 issued a show cause notice in Form GST-RFD-08 calling upon the petitioner to show cause as to why the refund application may not be rejected. The reason as disclosed in the show cause notice (Annexure-2) is "Other".

9. Considering the rival submissions made at the Bar and the judgment of the Hon'ble Supreme Court, I have no hesitation in holding that in quasi judicial proceedings that too relating to financial adjudication, the proposed reasons for rejection should be specifically contained and informed to the assessee so as to enable him to give his reply in a conclusive and reasonable manner. The perusal of the show cause notice in the present case fall short of all the known principles of natural justice and no prudent man could have given reply to the kind of show cause notice, which was served upon the petitioner. For the sole reason that the order rejecting the claim is based upon a silent show cause notice, I have no hesitation in holding that the principles of natural justice have been violated while adjudication of refund claim of the petitioner.

10. Accordingly, the order dated 7-4-2020 as well as the appellate order dated 14-9-2020 are set aside. The respondent No. 2 is directed to pass a fresh order on the application of the petitioner, for refund, already filed by the petitioner under Form RFD-01, after supplying all the requisite documents and the ground on which the department proposes to reject the application and after giving an adequate



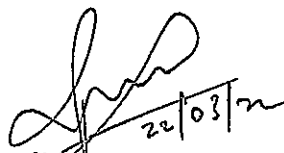
*opportunity of hearing to the petitioner in accordance with law. The said application shall be decided as expeditiously, if possible, preferably within a period of three months from the date of filing of the copy of this order.*

From the above para, I find that the facts and circumstances of the above case law are very much similar to the facts and circumstance of the present matter before this appellate authority. Hence in the light of above judgement, I find that the *adjudicating authority* has violated the principle of natural justice in passing the *impugned orders* vide which rejected the refund claims without being heard the appellant as well as without communicating the valid or legitimate reasons before passing said orders.

5. In view of above, I hereby set aside both the *impugned orders* to the extent of rejection of refund claims and allowed both the appeals filed by the 'Appellant'.

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

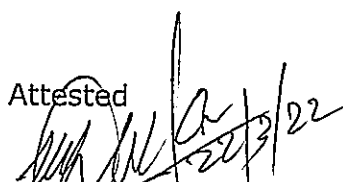
The appeals filed by the 'Appellant' stand disposed off in above terms.

  
22/03/22  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 22.03.2022

Attested

  
(Dilip Jadav)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad



By R.P.A.D.

To,

M/s. Baxter Pharmaceuticals India Pvt. Ltd.,  
Baxter Ahmedabad Head Office,  
Ramdas Road, Nr. Parimal Railway Crossing,  
Ahmedabad - 380054

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-VI - S G Highway West, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File