



सत्यमेव जयते

आयुक्तकाकार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.  
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2828/2023 / ६१११
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-108/2023-24 and 30.11.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	05.12.2023
(ङ)	Arising out of Order-In-Original No. ZI2407230400144 dated 28.07.2023 passed by The Deputy Commissioner, CGST, Division-VI, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Intas Pharmaceuticals Limited (GSTIN: 24AAACI5120L1ZU), Sub Plot No. A, Final Plot No. 255, TPS No. 38, Nr. Thaltej Cross Road, SG Highway, Ahmedabad, Gujarat-380054

(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 <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****BRIEF FACTS OF THE CASE:**

M/s. INTAS PHARMACEUTICALS LIMITED, (GSTIN: 24AAACI5120L1ZU) SUB PLOT NO. A, FINAL PLOT NO. 255, TPS NO 38, NR. THALTEJ CROSS ROAD, SG HIGHWAY, Ahmedabad, Gujarat, 380054 [hereinafter referred to as "the appellant"] have filed an appeal against OIO No.Z12407230400144 dated 28-07-2023 [hereinafter referred to as "impugned order"] passed by the Deputy Commissioner, CGST & C.Ex., Division-VI, Ahmedabad-NORTH [hereinafter referred to the "adjudicating authority"].

2. Facts of the case in brief, are that the appellant had filed Refund claim of Rs.39,08,498/- under the category of 'ANY OTHER(SPECIFY)' for the period February'2023. On verification of the Refund Claim application and documents attached therein, it was found that the refund application had been filed for refund of Rs.39,08,498/-, which was ITC reversal by the claimant vide DRC-03 ARN No.s AD240123003983H and AD2401230040911

both dtd: 05.01.2023. The said reversal of ITC was done by the claimant against ITC claimed on the basis of invoices issued by M/s. Gopal Enterprises (GSTIN 24ARRPG2029D2Z3).

per GSTR-1 returns filed by M/s. Gopal Enterprises (GSTIN 24ARRPG2029D2Z3), they had issued invoices to the Appellant during the FY. 2019-20 and 2020-21 (Apr'2020 to Dec'2020). However M/s. Gopal Enterprises had neither filed their GSTR-3B Returns for the said period nor had paid the Tax on such invoices issued by them.

A letter F.No.CGST-O6/AR-II/Misc-Corres/2022-23 dated 14.12.2022 was issued to the Appellant requesting them to reverse the Input Tax Credit availed on the basis of invoices issued by the fictitious company M/s. Gopal Enterprise. Consequent to the said letter, the Appellant vide letter dtd. 10.01.2023 submitted that they have reversed the total ITC of Rs.39,08,498/- availed by them on the basis of invoices issued by M/s.Gopal Enterprises. Further, the Appellant, have stated that before 01.10.2022, there was no specific provision in CGST Law requiring the recipient to reverse the ITC if supplier fails to pay the corresponding GST to Govt.Exchequer and that this provision to reverse such ITC was introduced by substituting Section 41 of the CGST Act, 2017 vide Finance Act, 2022 w.e.f. 01.10.2022. However, as the Input Tax credit passed-on to the Appellant has arisen from invoices used by M/s. Gopal Enterprises, on which the tax charged has not been paid, in view of Section 16(2) of the

CGST Act, 2017 and the Section 41 *ibid*, the Input Tax Credit appeared to be ineligible.

Therefore a Show Cause Notice in form GST RFD-08 bearing ARN No.ZH2406230402498 dated 28.06.2023 calling them to show cause as to “*why the Refund claim application of Rs.39,08,498/- should not be rejected as discussed above?*”

3. The adjudicating authority passed the following order in the above matter:

*“..the refund claim filed by applicant is found to be inadmissible and accordingly refund claim amount of Rs.39,08,498/- is rejected in terms of Section 54 of the CGST Act, 2017 read-with Rule 89 of the CGST Act, 2017 read with CGST Rules, 2017. RFD-06 is being issued on AIO accordingly.”*

4. Being aggrieved with the above impugned order of the adjudicating authority, the appellant filed the present appeal on the following grounds:

*“1.0. The Adjudicating Authority has rejected the Refund claim filed by Appellant mainly on the following grounds :*

*“a) From Section 41 of CGST Act, 2017, it is evident that the amendment regarding reversal of ineligible credit of Invoices on which tax has not been paid and its re-availment on payment of tax by the supplier, has been introduced w.e.f. 1st October 2022 only.*

*b) I find that from the Section 16(2) (c) of the Central Goods and Service Tax Act, 2017 mentioned Section 41 (as amended) and Section 16(2) of the CGST Act, 2017, that the Section 41 of the CGST Act, 2017 was amended w.e.f. 01.10.2022, wherein the reversal of ineligible credit of invoices on which tax has not been paid and its re-availment on payment of tax by the supplier, has been introduced w.e.f. 1st October 2022 only.*

*c) Further, as per Section 16(2) of the CGST Act, 2017, no registered person shall be entitled to credit of input tax credit unless, the tax charged in respect of such supply has been actually paid to the Government.*

*2.0. The period in which the Input Tax Credit of Rs. 39,08,498/- was availed is from April 2019 to March 2021. Section 41 of CGST Act, 2017 was amended vide Finance Act, 2022 w.e.f.01.10.2022,*

*3.0. It is submitted that before 01.10.2022, there was no specific provision in CGST Law requiring the recipient to reverse the ITC if supplier fails to pay the corresponding GST to Govt. Exchequer and that this provision to reverse such*

ITC was introduced by substituting Section 41 of the CGST Act, 2017 vide Finance Act, 2022 w.e.f. 01.10.2022.

5.0. Adjudication Authority has placed reliance on Section 16 of the CGST Act, 2017 From the aforesaid provisions it is clear that Section 16(2)(aa) of the CGST Act, 2017, was inserted vide Finance Act, 2021 w.e.f. dated 28.03.2021 w.e.f. 01.01.2022.

7.0. With regard to Section 16(2)(c) of the CGST Act, 2017, it is submitted that :

A) THAT the learned Adjudicating Authority has failed to appreciate that, under Section 16(2)(c) of the CGST Act, 2017, a completely arbitrary and onerous condition has been imposed on the recipient according to which, the recipient is entitled to the ITC only if the tax charged from it is actually paid by the supplier to the Government. That this condition imposed under Section 16(2)(c) of the CGST Act, 2017 is completely contrary to the essence of the GST which are seamless flow of credit and mitigation of cascading effect, when the Recipient (Appellant) has already paid the GST to the supplier .

B) THAT the learned Adjudicating Authority has failed to appreciate that, Section 16(2)(c) of the CGST Act, 2017 denies to the bonafide Purchaser the benefit of the GST paid to the supplier. ITC on account of default by the supplier in paying tax to the Government after having collected the same from the Purchaser cannot be denied over whom Purchasers have no control. This way the very purpose of the GST legislation has been defeated by Section 16(2)(c) of the CGST Act, 2017. Furthermore, though the charge of tax and the liability has been cast upon the supplier to pay the tax to the Government, there is no justifiable reason to unnecessarily cast a liability on the recipient to ensure actual payment of taxes by the supplier to the Government. Furthermore, no mechanism has been prescribed under the CGST Act, 2017 to equip the recipient for ensuring payments of the same. It is pertinent to mention here that adequate provisions exist in the GST Act to deal with the situation where a supplier has defaulted in making payment of tax to the Government despite having it collected from the recipient. It is completely arbitrary and unreasonable to deprive the recipient of his right to avail credit for the default by the supplier in payment of his due taxes. It is akin to punishing a third person for the default of the supplier.

C) THAT the learned Adjudicating Authority has failed to appreciate that Section 16(2)(c) of the CGST Act, 2017 has to be interpreted in a manner such that it is in consonance with the object and the purpose of the CGST Act, 2017 and such that there is no blockage of input credit to any bona fide recipient

who having procured the supplies from registered suppliers against valid invoices, as required under Rule 36 of the CGST Rules, 2017 for availing ITC, and paid such suppliers, stands to lose such input tax credit for no fault on its part.

D) THAT the learned Adjudicating Authority has failed to appreciate that although the objective of the CGST Act, 2017 was never to punish the innocent and bonafide recipients, Section 16(2)(c) of the CGST Act, 2017 penalizes them by depriving them of the rightful Input Tax Credit for the fault of the suppliers.

E) THAT the learned Adjudicating Authority has failed to appreciate that even though under the CGST Act, 2017, the supplier has been made responsible for collection and payment of tax since the levy of GST is on the supplier, Section 16(2)(c) practically 'casts the responsibility on to the recipient to ensure that the tax payments have been made by the supplier to the Government in order to avail ITC, which is certainly against the scheme of the CGST Act, 2017 besides being onerous, impractical and impossibility : of compliance.

F) THAT the learned Adjudicating Authority has failed to appreciate that the denial of ITC could be justified where the recipient dealer has not acted with due caution or without obtaining the documents necessary for obtaining credit. However, denying ITC to a recipient who has acted in a bona fide manner and verified the credentials of its suppliers and received the supplies under invoices is clearly violative of Article 14 of the Constitution of India. Section 16(2)(c) of the CGST Act, 2017 creates a further classification between (1) a bona fide taxpayer whose supplier pays the tax to the Government and (2) a bona fide taxpayer whose supplier, despite such bona fide recipient exercising due caution, defaults in making payment of tax.

Thus, in such a case, where there are two recipients both of whom have paid the tax to their respective suppliers, dealt with registered supplier and made the payment against valid GST invoices, yet one stands to lose out on ITC while the other claims the same. Such classification is again violative of Article 14 of the Constitution of India as being manifestly arbitrary and lacks in determining principle in application of Section 16(2)(c) of the CGST Act, 2017.

G) THAT the learned Adjudicating Authority has failed to appreciate that under various provisions of CGST Act, 2017, the Department has been vested with the powers not only to recover tax but also to issue notices, impose penalty and collect interest in case of default in payment of taxes.

H) That under the provisions of Section 76 it is clear that where the suppliers have collected the duty, the same is recoverable being payable by the suppliers to the Department. That the Department can recover the duties collected but not deposited. Thus, for this reason also to call upon the Recipient to ensure that the suppliers have paid the duty before being eligible for credit is totally arbitrary, unsustainable and liable to be set aside.

I) That it is also of paramount importance to point out, as was the position in the Service Tax regime, that in a situation where the supplies are accepted by the supplier but tax has not been paid, the same are recoverable as arrears of land revenue as per the provisions of Section 75(12) read with Section 79(1)(e) to the GST enactments. Thus, where the amounts are recoverable as arrears of land revenue, it is totally unfair, unjust and arbitrary to deny the credit to the recipients only on account of the suppliers not depositing the tax with the Department after having collected the same from the Recipient-Appellant.

J) THAT the learned Adjudicating Authority has failed to appreciate that Section 16(2)(c) of the CGST Act, 2017 provides for a conditionality wherein the Recipient is not entitled to avail ITC if the tax has not been paid to the Government by the supplier. It is the responsibility of Government to develop a machinery for collection of taxes and take action against erring non-tax payers in cases of default and such responsibility cannot be shifted on the recipient by way of Section 16(2)(c) of the Act, so as to make the recipient liable for enforcing payment of taxes by the supplier. However, the provisions of CGST Act, 2017 does not empower the recipient for enforcing payment the suppliers.

8.0 Appellants had availed the ITC on invoices issued by M/s Gopal Enterprise (supplier) in accordance with the conditions laid down under section 16(2) of the CGST Act, 2017 and rules made thereunder. However, due to non-payment of tax by the supplier to the Government, Appellants have been asked by Department to reverse ITC on the invoice issued by said supplier and which was also accordingly reversed by Appellants although Appellants did not agree for such reversal.

9.0. It is submitted that M/s. Gopal Enterprise had uploaded the Invoices on GSTIN portal by way of filling of GSTR-1 returns which were also reflected in Appellants GSTR-2A/2B. Accordingly, ITC has been availed based on invoices reflected in Appellants GSTR-2A/2B, which is one of the basic condition laid down under Rule 36(4) of the CGST Rule, 2017.

10.0 It is submitted that while availing credit of input tax, Appellants have verified supplier GST Registration status on GSTIN portal, which was ACTIVE

at that time and hence, Appellants availed the ITC. Later on, the supplier's GST registration was suo-moto cancelled w.e.f. 29.01.2021, retrospectively.

11.0. Adjudicating Authority failed to appreciate that it is not possible to verify whether the GSTIN status of any supplier is active or not and to force any vendor to make compliances under CGST Act, 2017 and rules made thereunder. It is only GST Department which can verify the GSTIN Status and ensure their compliances. Thus, it is very much apparent that Appellants had availed the aforesaid ITC bona fide and in good faith. Appellants have also reversed the same in compliance to Department's letter dated 14.12.2022 with condition, to file refund for the same.

12.0. From the plain reading of above section, it is very much clear that the provision to reverse the ITC availed on invoices, on which the tax has not paid to the Government, and later on, re-avail it based on payment of tax by the supplier to the Government, is applicable w.e.f. 01.10.2022 only and not on or before that.

13.0. Section 41 read with Section 16(2)(c) of the CGST Act, 2017 is applicable prospectively. Since, the applicability of such a section is prospective in nature, the Department cannot invoke such a section to demand reversal of ITC from the recipient of supply in the event of non payment of output tax liability by the supplier for the period before its applicability.

14.0. Adjudicating Authority did not consider the Judgment of Hon'ble Madras High Court in the case of M/s. D. Y.Beathel Enterprises Vs. State Tax Officer reported in 2022 (58) GSTL)269 (Mad.) wherein it was held that in case of default of payment of tax by the seller, the recovery shall be made from the seller and only in exceptional circumstances, it can be made from the recipient, therefore, the Input Tax Credit which was claimed by the assessee cannot be denied for the reason that the seller has not paid tax to the Government.

15.0. In above judgment, reliance was also place on the Press Release issued by the Central Board of GST council on 4.5.2018, wherein, it has been mentioned that there shall not be any automatic reversal of ITC from the buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc.

16.0 Honourable Calcutta High Court in case of SUNCRAFT ENERGY PRIVATE LIMITED AND ANOTHER VERSUS THE ASSISTANT COMMISSIONER, STATE TAX, BALLYGUNGE CHARGE AND OTHERS reported in 2023 (8) TMI 174 - CALCUTTA HIGH COUT has held as.....

17.0. Since, Appellants as a recipient, have availed the ITC bona fide and good faith, they should not be penalized due to non-payment of tax by the supplier to the Government just because it is an easy recourse. Department should first initiate recovery proceeding against the fraud supplier only (i.e. Gopal Enterprise) since all the requisite details are available with GST Department only, based on that GST registration application was granted.

18.0. It is respectfully submitted and the Appellants are entitled to refund of Input Tax Credit reversed in view of settled legal position.”

Further the appellant has prayed to set aside the impugned order with consequential relief.

#### PERSONAL HEARING:

5. Personal hearing in the matter was held on 17.10.2023 virtually, Shri Willingdon Christian, Advocate, appeared on behalf of the Appellant in the present appeal. During the Personal Hearing it was submitted that the Section 41 of the CGST Act, 2017 was amended w.e.f. 1.10.2022 only, therefore, the said provisions are not applicable in their case as refund pertains to the period prior to this amendment. He further reiterated the written submissions and requested to allow the appeal.

#### DISCUSSIONS AND FINDINGS:

6. I have gone through the facts of the case, available documents on record and written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is :

Whether the impugned refund order passed by the Adjudicating Authority is legal & proper or otherwise?

6.1 At the foremost, I observed that in the instant case the "impugned order" is of dated 28-07-2023 and the present appeal is filed online on 4-09-2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. Therefore, I find that the present appeal is filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

6.2 In this regard, I observe that the issue involved in the present appeal is that the Department observed that as per GSTR-1 returns filed by M/s. Gopal Enterprises (GSTIN 24ARRPG2029D2Z3), they had issued invoices to the Appellant during the FY. 2019-20 and 2020-21 (Apr'2020 to Dec'2020).



However M/s. Gopal Enterprises had neither filed their GSTR-3B Returns for the said period nor had paid the Tax on such invoices issued by them. On the basis of written communication vide letter F.No.CGST-O6/AR-II/Misc-Corres/2022-23 dated 14.12.2022 the Appellant reversed the total ITC of Rs.39,08,498/- availed by them on the basis of invoices issued by M/s. Gopal Enterprises. They further filed a refund claim of the said reversal of ITC of Rs.39,08,498/- before the authority on 25.05.2023, which was rejected vide the impugned order to them on the basis of the provisions of Rule 16(2) of the CGST Rules, 2017.

6.3 I also observe that the Appellant has contended that M/s. Gopal Enterprise had uploaded the Invoices on GSTIN portal by way of filling of GSTR-1 returns which were also reflected in Appellants GSTR-2A/2B. Accordingly, ITC has been availed by them based on invoices reflected in Appellants GSTR-2A/2B, which is one of the basic condition laid down under Rule 36(4) of the CGST Rule, 2017. Further that that while availing credit of input tax, Appellant have verified supplier GST Registration status on GSTIN portal, which was ACTIVE at that time and hence, Appellant availed the ITC. Later on, the supplier's GST registration was suo-moto cancelled w.e.f. 01.10.2021, retrospectively. Further, contended that from the plain reading of Section 41 of the CGST Act, 2017 as amended, it is very much clear that provision to reverse the ITC availed on invoices, on which the tax has not paid to the Government, and later on, re-avail it based on payment of tax by the supplier to the Government, is applicable w.e.f. 01.10.2022 only and not on or before that.

6.4 In this regard I find that as per amendment made in Section 41 the credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed, further Section 16(2) (c) also provides that subject to the provisions of Section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax edit admissible in respect of said supply and he has furnished the return under Section 39. The relevant portions of the sections of CGST Act, 2017 read as under:

**\*Section 41. 1[Availment of input tax credit**

*(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-*

assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

*Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.]*

\* Enforced w.e.f. 22nd June, 2017.

**\*Section 16. Eligibility and conditions for taking input tax credit.-**

Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

<sup>1</sup>[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

(b) he has received the goods or services or both.

<sup>2</sup>[**Explanation.-** For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent

or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

<sup>3</sup>[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of <sup>4</sup>[section 41 <sup>5</sup>[\*\*\*]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply;  
and

(d) he has furnished the return under section 39:

\*Enforced w.e.f. 1st July, 2017.

1. Inserted (w.e.f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021) by s. 109 of The Finance Act, 2021 (No. 13 of 2021).

Substituted (w.e.f. 1st February, 2019) for "Explanation.-For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;" by s. 8 of The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018).

3. Inserted (w.e.f. 1st October, 2022 vide Notification No. 18/2022 - CT dated 28.09.2022.) by s. 100 of The Finance Act 2022 (No. 6 of 2022).

4. Substituted "section 41" (w.e.f. a date yet to be notified) by s. 8 of The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018).

5. Omitted "or section 43A" (w.e.f. 1st October, 2022 vide Notification No. 18/2022 - CT dated 28.09.2022.) by s. 100 of The Finance Act 2022 (No. 6 of 2022).

6. Substituted (w.e.f. 1st October, 2022 vide Notification No. 18/2022 - CT dated 28.09.2022.) by s. 100 of The Finance Act 2022 (No. 6 of 2022) for "due date of furnishing of the return under section 39 for the month of September".

7. Omitted "invoice relating to such" (w.e.f. 1st January, 2021 vide Notification No. 92/2020-C.T., dated 22nd December, 2020) by s. 120 of The Finance Act, 2020 (No. 12 of 2020) .

8. Inserted vide Order No. 02/2018 -Central Tax dated 31st December, 2018.

\*Section 39. Furnishing of returns.-

<sup>1</sup>[(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:

<sup>3</sup>[(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

\* Enforced w.e.f. 22nd June, 2017.



Substituted by s 97 of The Finance (No. 2) Act, 2019 (No. 23 of 2019) -  
Brought into force w.e.f. 10th November, 2020 vide Notification No. 81 /2020-CT dated 10-11-2020. for

★ "(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, [in such form, manner and within such time as may be prescribed], a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed, [\*\*\*\*]

[Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall furnish return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein.]

(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter."

2. Substituted (w.e.f. 1st October, 2022 vide Notification No. 18/2022 - CT dated 28.09.2022.) by s. 105 of The Finance Act 2022 (No. 6 of 2022) for "twenty".

3. Substituted by s. 97 of The Finance (No. 2) Act, 2019 (No. 23 of 2019) - Brought into force w.e.f. 10th November, 2020 vide Notification No. 81/2020-C.T., dated 10-11-2020 for

"(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

[Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall pay to the Government the tax due or part thereof as per the return on or before the last date on which he is required to furnish such return, subject to such conditions and safeguards as may be specified therein.]"

6.5 From the co-joint reading of the above sections, I find that registered person shall, be entitled to avail the credit of eligible input tax, charged on supply of goods or services or both to him which are used or intended to be used in the course of furtherance of his business, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger, subject to the condition among others that the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit, in respect of the said supply and he (the supplier) has furnished the return under Section 39.

6.6 I find that in the present case, M/s Gopal Enterprises has neither paid the Tax on invoices issued to the Appellant during the period as mentioned in above paragraphs nor filed GSTR-3B Return which is the most important condition of eligibility for taking Input Tax Credit by the inputs/services receiver i.e. the appellant in preset case.

6.7 I also find that the provisions of section 41 are made applicable w.e.f. 01.10.2022, however the provisions of Section 16 i.e. Eligibility and conditions for taking input tax credit and Section 39 furnishing of Returns are in existence prior to this date.

6.8 As quoted by the appellant in a case of M/s Suncraft Energy Private Limited and Another Vs. the Assistant Commissioner, State Tax, reported in 2023(8) TMI 174 – Hon'ble Calcutta High Court, it has been held as under :

"10. In the result, the appeal is allowed, the orders passed in the writ petition is set aside and the order dated 20.02.2023 passed by the first respondent namely the Assistant Commissioner, State Tax, Ballygaunge Charge, is set

*aside with a direction to the appropriate authorities to first proceed against the fourth respondent and only under exceptional circumstance as clarified in the press release issued by the Central Board of Indirect Taxes and Customs (CBIC), then and then only proceedings can be initiated against the appellant. With the above observations and directions the appeal is allowed."*

6.9 The above judgment is not applicable in the present case, as I find that in the present case the reversal of ITC has already been made by the appellant consequent to letter dated 14.12.2022 issued by the authority to the Appellant, requesting them to reverse the ITC availed on the basis of Invoices issued by the fictitious company viz. M/s Gopal Enterprise. As the appellant filed refund of the said ITC reversed, the refund is denied by the Adjudicating authority.

6.10 Further, in the Hon'ble Madras High Court's judgment quoted by the Appellant, reliance was also placed on the Press Release issued by the Central Board of GST council on 4.5.2018, wherein, it has been mentioned that there shall not be any automatic reversal of ITC from the buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the \* supplier or the supplier not having adequate assets etc.

6.11 From the above, I find that the recovery in such cases shall be made from the seller, however, reversal of credit from buyer is also available option with the revenue authorities to address exception situations. I find that in the present case that supplier i.e. M/s. Gopal Enterprise has been mentioned as fictitious Company and neither paid the tax nor filed the Returns. A letter dated 14.12.2022 was issued to the Appellant by the authority requesting them to reverse the Input Tax Credit availed on the basis of Invoices issued by the fictitious company M/s Gopal Enterprise. Consequent to the said letter, the appellant vide letter dated 10.01.2023 submitted that they have reversed the total ITC of Rs.39,08,498/- availed by them on the basis of invoices issued by M/s Gopal Enterprises. Thus, I find that the reversal of the said ITC is proper and thus the refund filed for the said reversal of ITC by the Appellant, has rightly been denied as explained supra. Therefore, I find that the order passed by the adjudicating authority is proper and Legal.

7. In view of the foregoing facts & discussion, I do not find any infirmity in the impugned order and the impugned order passed by the

adjudicating authority is legal and proper and as per the provisions of law to the above extent. Accordingly, I reject the present appeal of the "Appellant".

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

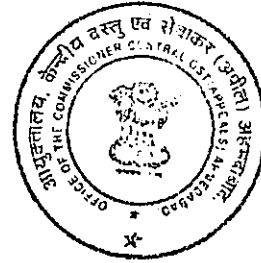
8. The appeal filed by the appellant stands disposed of in above terms.

*Aadesh Kumar Jain*  
30/11/2023

(ADESH KUMAR JAIN)  
JOINT COMMISSIONER (APPEALS)  
CGST & C.EX., AHMEDABAD.

Attested

*Sunifa D. Nawani*  
(Sunifa D. Nawani)  
Superintendent,  
CGST & C.Ex.,  
(Appeals), Ahmedabad



By R.P.A.D.

To:

M/s. INTAS PHARMACEUTICALS LIMITED,  
SUB PLOT NO. A, FINAL PLOT NO. 255, TPS NO 38,  
NR. THALTEJ CROSS ROAD, SG HIGHWAY,  
Ahmedabad, Gujarat, 380054 (GSTIN: 24AAACI5120L1ZU)

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Appeals, Ahmedabad
3. The Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
4. Addl./Joint Commissioner(System), CGS & C.Ex., Ahmedabad North
5. The Dy./Assistant Commissioner, CGST & C.Ex. Division-VI Ahmedabad-North Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File/ P.A. File.

