

<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR,</p>
<p>फ़ोन नंबर./ PHONE No.: 079-27544557 फ़ैक्स/ FAX : 079-27544463 E-mail:- <a href="mailto:paahmedabad2@gmail.com">paahmedabad2@gmail.com</a></p>		

F.No. GEXCOM/SCN/GST/340/2020-ADJN-O/o Commr-CGST Ahmedabad(N)  
DIN-20210264WT000000C17D

आदेश की तारीख/Date of Order : - 10.02.2021  
जारी करने की तारीख/Date of Issue :- 16.02.2021

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 44/JC/MT/GST/2020-21

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।  
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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से तीन महीने के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या GST APL-1 में दाखिल कर सकता है। इस अपील पर रु 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form GST APL-1 to the Commissioner (Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त(अपील) के समक्ष नियमानुसार पूर्व जमा की धनराशि का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeals) on giving proof of payment of pre-deposit as per rules .

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST APL-1 में दो प्रतियों में दाखिल की जानी चाहिए। यह अपील सीजीएसटी अधिनियम, 2017 की धारा 107(1) के साथ सीजीएसटी नियम, 2017 के नियम 108 एवं 109(A) के प्रावधानों के अनुसार होनी चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

उक्त अपील की प्रति।

निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

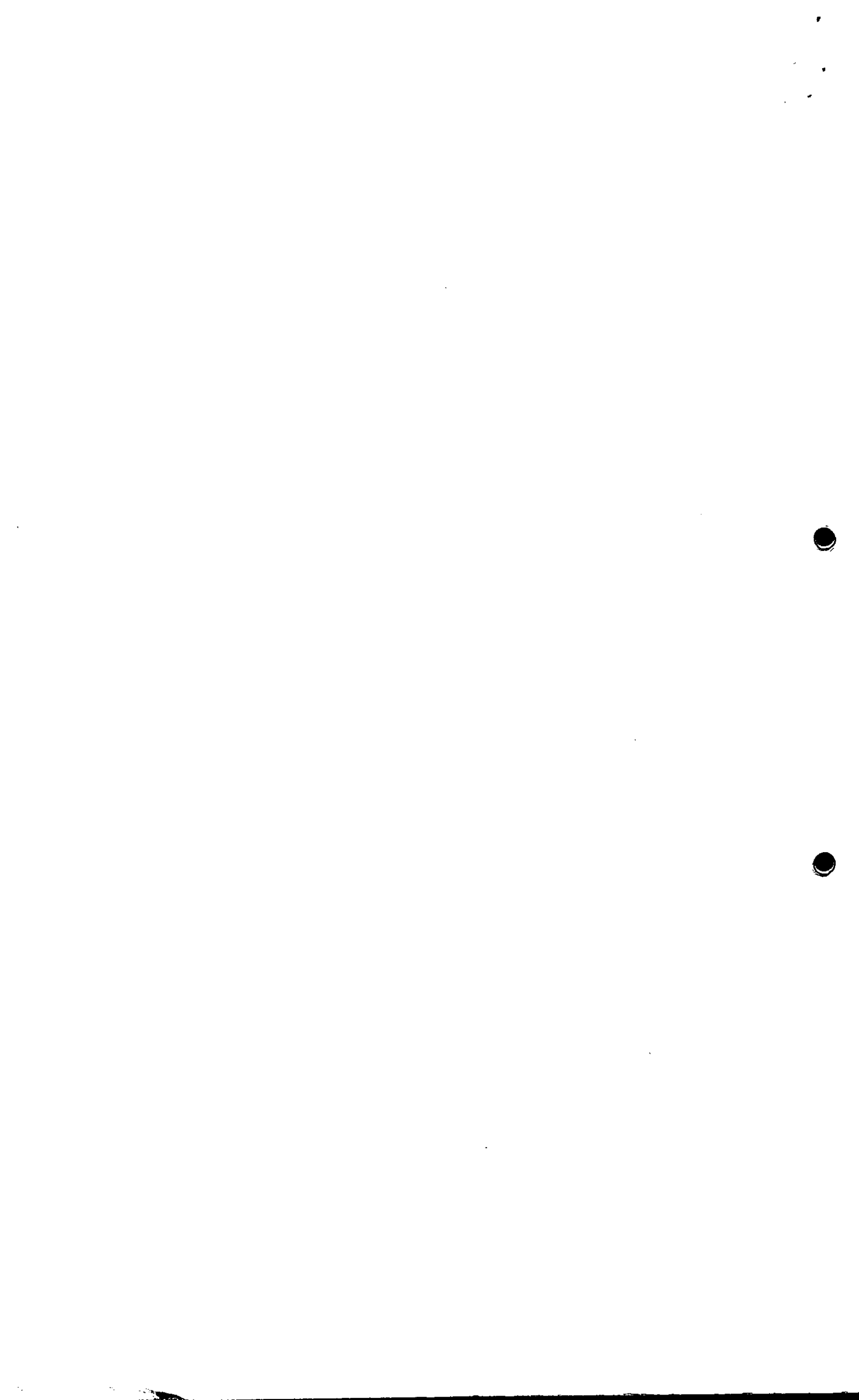
The appeal should be filed in form GST APL-1 in duplicate. This Appeal should be in accordance with the provisions of subsection(1) of Section 107 of CGST Act, 2017 read with Rule 108 and 109(A) of CGST Rules, 2017. It should be accompanied with the following:

Copy of accompanied Appeal.

Copies of the decision, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.



कारण बताओ सूचना/Show Cause Notice No. GEXCOM/SCN/GST/340/2020-ADJN-O/o Commr-CGST Ahmedabad(N) dated 02.12.2020 issued to M/s. Torrent Pharmaceuticals Ltd., Ahmedabad.



आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद -उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009		OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1 <sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009
फ़ोन नंबर/ PHONE No.: 079-27544557	फैक्स/ FAX : 079-27544463	E-mail:- oahmedabad2@gmail.com

To

24AAACT5456A1ZR

M/s Torrent Pharmaceuticals Limited,  
 Torrent House, Off Ashram Road,  
 Ashram Road, Ahmedabad-380009.

**Tax Period – August- 2017 (Erroneous refund)**

F.Y. - 2017-18

Act - CGST Act, 2017

Section / sub-section under which Order is being issued - Sec 73 (9)

**SCN /Demand Reference No. – GEXCOM/SCN/GST/340/2020-ADJN-O/o Commr-CGST Ahmedabad(N).** **Date: 02.12.2020**

**Brief facts of the case :**

1.M/s. Torrent Pharmaceuticals Limited, Torrent House, Off Ashram Road, Ahmadabad (hereinafter referred as the claimant) is registered with Central Goods & Services Tax Department having GSTIN No. 24AAACT5456A1ZR.

2. The claimant had filed a refund claim of Rs. 7,80,46,724/- in which IGST of Rs.6,32,11,620/, CGST of Rs. 74,17,552/- and SGST of Rs. 74,17,552/- dated 23.01.2018 for the month of August, 2017 on account of input tax credit (ITC) accumulated due to Zero rated supply of goods,

*Table 1 : Refund claim applications filed by the assessee*

Refund period	Application Reference(ARN) No.	Amount of Refund claim (Rs.)			
		IGST	CGST	SGST	Total
Aug- 17	AA240817973853K	63211620	7417552	7417552	78046724

3. Vide following final refund order (Form GST-RFD-06), the above refund claim was sanctioned to the claimant:

*Table 2 : Refund claims sanctioned to the claimant*

Refund period	Refund Order (Form-RFD-06) No. & Date	Amount of Refund Sanctioned (Rs.)			
		IGST	CGST	SGST	Total
Aug- 17	Div-VII/GST-Refund/06/final/Torrent/2018 dated 07.03.2018	63211620	7417552	7417552	78046724



4. The said claim file was sent for post-audit. The Assistant Commissioner, Audit Cell vide letter F.No. VI/1(b)-48/Post-Audit/Div-VII/2017-18 dated 23.05.2018 had observed that "as per GST RFD-01 the claimant has availed input tax credit of IGST of Rs. 12,42,94,368/-, CGST of Rs. 1,54,94,998/- and SGST of Rs. 1,54,94,998/- during August-2017 i.e. total eligible credit is Rs. 15,52,84,364/-. Further, it is observed that they have utilized IGST credit of Rs. 8,21,99,728/-, CGST credit of Rs. 1,14,39,061/- and SGST credit of Rs. 1,14,39,061/-, i.e. total of Rs. 10,50,77,850/-, for the payment of duty during August, 2017". Thus, it appeared that there was balance of only Rs. 5,02,06,514/- of input tax credit available with the claimant for refund. The Jurisdictional Assistant Commissioner had replied to the same vide their office letter F.No. Div-VII/CGST/Misc./Refund-Rebate/17-18 dated 16.10.2018. In this regard The Deputy Commissioner (Audit) vide letter F.No.VI/1(b)-48/Post-Audit/Div-VII/17-18 dated 23.10.2018 has observed that "Thus, it appears that your compliance is not relevant in context of provisions under Section 54(3) i.e. "a registered person may claim refund of any unutilized ITC at the end of any tax period" that has not been followed while allowing the subject claims for the month of July-2017 and August-2017. Hence, the claim sanctioned does not appear proper and it is requested to take necessary action for safeguards to the revenue".

5. In view of the above, the said claimant was not eligible for refund of unutilized Input Tax Credit amounting to Rs. 2,78,40,210/- on zero-rated supply of goods as the claimant was having unutilized balance of ITC amounting to Rs. 5,02,06,514/- only as against the refund claim amounting to Rs. 7,80,46,724/-.The refund amount ineligible to the claimant calculated by audit as under :

Table 3 : Amount ineligible to the claimant

Refund period	Refund Order (Form-RFD-06) No. & Date	Refund Amount ineligible (Rs.)			
		IGST	CGST	SGST	Total
Aug- 17	Div-VII/GST-Refund/06/final/Torrent/2018 dated 07.03.2018	21116980	3361615	3361615	27840210

6. Whereas, it was observed that the aforesaid Final Refund order (RFD-06) has not been accepted by the department. The reviewing authority vide following Review Order, reviewed the refund sanctioned on the grounds mentioned below and filed Appeal before Commissioner(Appeals), Central Tax, Ahmedabad against the said refund order :

Table 4 : Details of Review orders

Refund period	Refund Order (Form-RFD-06) No. & Date	Review order No. & Date	Appeal filed on
Aug-17	Div-VII/GST-Refund/06/final/Torrent/2018 dated 07.03.2018	26/2018-19 dated 24.10.2018	25.10.2018

As per review order departmental appeal was filed on following grounds-



(i) As per sub-section (3) of the Section 54 of the CGST Act, 2017 :

*"a registered person may claim refund of any unutilized input tax credit at the end of any tax period."*

(ii) In the month for which refund claim was filed, there was no balance of input tax credit lying unutilized.

(iii) The Adjudicating authority has erroneously sanctioned refund of Rs. 27840210/- for Aug- 2017 which needs to be recovered along with interest.

8. The Commissioner (Appeals), Central Tax, Ahmedabad vide Order-In-Appeals No. AHM-EXCUS-002-APP-207& 208-18-19 dated 07.03.2019 (issued on 08.05.2019), allowed the Departmental appeal filed above and set aside the impugned order and allowed the prayer of the department for recovery of the erroneous refund along with interest. Para 6, of the Order-in-appeal is as under:

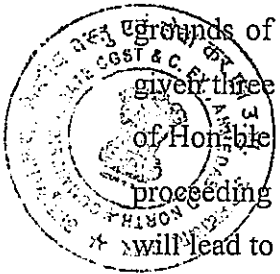
*"Therefore ,as per the discussion held, the appeals filed by the department is allowed and as proposed, I set aside the impugned orders and direct the proper authority to recover the refund/excess refund granted to the respondents along with interest at appropriate rate".*

9. In view of above, (1) the grant of excess refund of Rs.27840210/-(Rs.21116980/- for IGST, Rs.3361615/- for CGST and Rs.3361615/- for SGST) for the month of Aug- 2017 vide RFD-06 Order No. Div-VII/GST-Refund/06/final/Torrent/2018 dated 07.03.2018 to M/s. Torrent Pharmaceuticals Limited in respect of refund of unutilized ITC in relation to exports of Goods, appeared to be erroneous and required to be recovered from them under Section 73(1) of the CGST Act, 2017 along with applicable interest.

10. So a Demand notice for erroneously refunded amount of Rs.27840210/- was issued to the assessee under section 73(1) of CGST Act on 02.12.2020 for safe guard of revenue. It is pertinent to mention that as per available records assessee has approached to Hon'ble Gujarat High Court vide SCA No.17989 of 2019 against the Order of Commissioner Appeals due to non constitution of Appellate Tribunal for GST. Hon'ble High Court has restrained the Dept. from recovery as interim relief to the party vide Order dated 16.10.2019.

11. Personal hearing in the matter was fixed on 19.01.2021 at 11.30 AM. Shri Ankit Jani, Manager Taxation, Torrent Pharmaceutical appeared on behalf of the noticee. He requested not to pass any order as the matter is pending before Hon'ble High Court.

12. After PH in the case the assessee has submitted a reply of the SCN on 25.01.2021 .In their reply the assessee has discussed about brief issue of the case from para-1 to 7 and given the grounds of defence in para-8 under the heading of 'Preliminary reply to SCN'. Noticee have given three grounds under para-8, firstly they have submitted that the present notice is violation of Hon'ble High Court which restrained the respondent department from initiating any recovery proceeding and should be dropped on this sole ground, secondly they submit that present notice will lead to duplicity of adjudication proceeding as the matter on merit is already adjudicated and refund granted and appeal proceedings are pending before High Court. Further they have stated



as third ground that there is no provision under GST law to issue protective SCN and present SCN should be dropped on this sole ground.

13. The noticee's contention that the present notice is violation of Hon'ble High Court is not correct as Hon'ble High Court has only restrained recovery and not issued any stay on departmental proceedings for safeguard of revenue. The notice is actually the claim of the department of the Tax and other dues for following the judicial discipline in respect of the order of Appellate Authority as Hon'ble High Court has not yet decided the matter. Further the noticee's contention that present notice will lead to duplicity of adjudication proceeding as the matter on merit is already adjudicated and refund granted and appeal proceedings are pending before High Court is not sustainable as the noticee is silent about Commissioner(Appeals) order. Further noticee's contention that there is no provision under GST law to issue protective SCN and present SCN should be dropped on this sole ground is not acceptable as every demand notice by the revenue department is issued for protection and safeguard of the government revenue.

14. The matter is pending before Hon'ble Gujarat High Court and the order of Commissioner Appeals is in favor of Revenue. The assessee was sanctioned excessive amount of refund overlooking the provisions of Section 54(3) of CGST Act, 2017. This order is passed during the pendency of the matter in Hon'ble Gujarat High Court due to time limit given in Section 73 of the CGST Act keeping in view of the present legal position. As per Section 73(10) the order is to be passed within three years from due date of furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within three years from the date of erroneous refund. The date of erroneous refund order in present case is 07.03.2018.

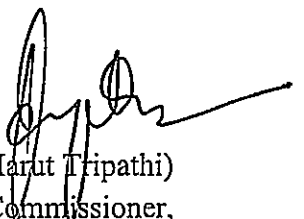
### Order

Thus I confirm the recovery of excessively refunded amount of Rs 2,78,40,210/- as per Section 73 of CGST Act, 2017 alongwith applicable interest. I am also bound to impose mandatory penalty as envisaged in Section 73( Sub section 9) which comes to Rs. 27,84,021/-.

The actual recovery of the Tax and other dues by the Department as per this order in pursuance of Section 78 & 79 of CGST Act,2017 is subject to the further developments in the SCA No.17989 of 2019 pending before Hon'ble High Court of Gujarat.

Date: 16.02.2021



  
(Marut Tripathi)

Joint Commissioner,  
CGST & C.Ex., Ahmedabad North,  
Office Address: Custom House, Navrangpura, Ahmedabad.

F.No. GEXCOM/SCN/GST/340/2020-ADJN-O/o Commr-CGST Ahmedabad(N)

Copy to:

- (1) The Deputy Commissioner, CGST & CE, Division-VII, Ahmedabad-North.
- (2) The Assistant Commissioner (RRA), CGST&CE, Ahmedabad-North.
- (3) The Superintendent, AR-I, Division-VII, CGST&CE, Ahmedabad-North.
- (4) Guard File.

<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p><b>GST</b> ONE NATION, ONE TAX, ONE MARKET</p> <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR,</p>
<p>फ़ोन नंबर./ PHONE No.: 079-27544557 फैक्स/ FAX : 079-27544463 E-mail:- <a href="mailto:aaahmedabad2@gmail.com">aaahmedabad2@gmail.com</a></p>		

F.No. GEXCOM/SCN/GST/339/2020-ADJN-O/o Commr-CGST Ahmedabad(N)

DIN-20210264WT000000F606

आदेश की तारीख/Date of Order :- 10.02.2021  
जारी करने की तारीख/Date of Issue :- 16.02.2021

द्वारा पारित/Passed by:- मारुत त्रिपाठी / Marut Tripathi  
संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 43/JC/MT/GST/2020-21

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उक्त अपील की प्रति।

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