



<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 & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE 1ST FLOOR.</p>
<p>फ़ोन नंबर./ PHONE No.: 079-27544557 फ़ैक्स/ FAX : 079-27544463 E-mail:- oaahmedabad2@gmail.com</p>		

DIN:20210264WT000000B,7AB

आदेश की तारीख/Date of Order : - 18.02.2021

जारी करने की तारीख/Date of Issue : - 18.02.2021

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 45/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 असंतुष्ट 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 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.

विषय:- कारण बताओ सूचना/Show Cause Notice No. GST/15-64/OA/2019 dated 22.10.2020

issued to M/s. Intas 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 st FLOOR, NAVRANGPURA, AHMEDABAD-380009
फ़ोन नंबर/ PHONE No.: 079-27544557 फ़ैक्स/ FAX : 079-27544463 E-mail:- oaahmedabad2@gmail.com		

To,
 24AAACI5120L1ZU
 M/s INTAS PHARMACEUTICALS LIMITED
 Sub Plot No. A; Final Plot No. 255, TPS No. 38,
 Near Thaltej Cross Road, SG Highway,
 Ahmedabad, Gujarat
 Tax Period-July 2017 & Aug. 2017 (erroneous refund)
 F.Y.-2017-18
 Act-CGST Act, 2017
 Section / sub-section under which Order is being issued - Sec 73(9)
 SCN reference No. GST/15-64/OA/2019 dated 22.10.2020

Brief facts of the case:

1. M/s. Intas Pharmaceuticals Limited, Sub Plot No. A; Final Plot No. 255, TPS No. 38, Near Thaltej Cross Road, SG Highway, Ahmedabad (hereinafter referred as the claimant) is registered with Central Goods & Services Tax Department having GSTIN No. 24AAACI5120L1ZU.
2. The said claimant had filed following refund claim Applications (GST RFD-01A) under Section 54 of CGST Act, 2017 on account of input tax credit (ITC) accumulated due to Zero rated supply of goods and services:

Table 1 : Refund claim applications filed by the assessee

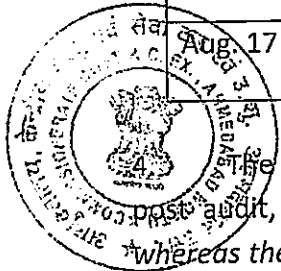
Refund period	Application Reference(ARN) No.	Amount of Refund claim (Rs.)			
		IGST	CGST	SGST	Total
July 17	AB240717959263T	81716137	5151846	5151846	92019829
Aug. 17	AB240817068477M	128044134	18860974	18860974	165766082

3. Vide following final refund orders (Form GST-RFD-06), the above refund claims were 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
July 17	02/ Final /2017-18 dated 28.03.2018	80988553	5088220	5088220	91164993
Aug. 17	05/Final/2017-18 dated 28.03.2018	128044134	18860974	18860974	165766082

The said refund claims were sent for post-audit purpose to audit section. During the post-audit, it was observed that "the claimant preferred claim for the month of July-2017 whereas there was no balance in respect of IGST, CGST & SGST, besides balance lying in CGST is pertained to transitional credit benefit availed by them, which is not allowed as cash refund as



per above sub-section (4) of Section 142 of CGST Act, 2017. Similar aspects also noticed in the claims for the months of August-2017 as the claimant have not sufficient balance at the end of tax period to debit against their IGST claimed amount. Hence, the claims sanctioned does not appear proper”.

5. In view of the above, the said claimant is not eligible for refund of Input Tax Credit on zero-rated supply of goods and services as the claimant was not having any unutilized balance of ITC in IGST, CGST and SGST and the balance lying in the CGST pertained to the transitional credit benefit availed by them. 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
July 17	02/ Final /2017-18 dated 28.03.2018	80988553	5088220	5088220	91164993
Aug. 17	05/Final/2017-18 dated 28.03.2018	50352560	0	0	50352560
		131341113	5088220	5088220	141517553

6. Whereas, it is observed that the aforesaid Final Refund orders (RFD-06) have not been accepted by the department. The reviewing authority vide following Review Orders, have 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
July 17	02/ Final /2017-18 dated 28.03.2018	40/2018-19 dated 10.12.2018	12.12.2018
Aug. 17	05/Final/2017-18 dated 28.03.2018	41/2018-19 dated 10.12.2018	12.12.2018

7. Appeal before Commissioner(A) 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) As per sub-section (4) of the Section 142 of the CGST Act, 2017 :

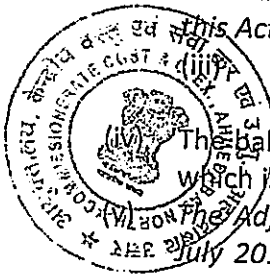
“Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law: Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.”

In the months for which refund claim was filed, there was no balance of input tax credit lying unutilized.

The balance lying in CGST pertains to transitional credit benefit availed by the respondent which is not allowed as cash refund in terms of Section 142(4) of the CGST Act, 2017.

The Adjudicating authority has erroneously sanctioned refund of Rs. 9, 11, 64, 993/- for July 2017, Rs. 5, 03, 52, 560/- for August 2017 which needs to be recovered along with interest..



with applicable interest.

Accordingly, the SCN is set aside and the refund is allowed with applicable interest. The Departmental orders are set aside and the refund is allowed with applicable interest.

8. The Commissioner (Appeals), Central Tax, Ahmedabad vide Order-in-Appeals No. AHM-EXCUS-002-APP-210&211-18-19 dated 22.03.2019 (issued on 01.05.2019), allowed the Departmental appeals filed above and set aside the impugned orders and allowed the prayer of the department for recovery of the erroneous refund along with interest.

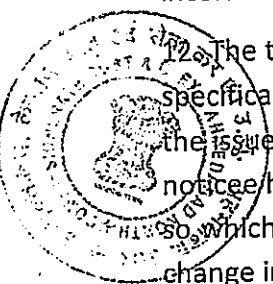
9. In view of above, (1) the grant of refund of Rs. 9, 11, 64, 993/- (Rs. 8, 09, 88, 553/- for IGST, Rs. 50, 88, 220/- for CGST and Rs. 50, 88, 220/- for SGST) for the month of July 2017 vide RFD-06 Order No. 02/ Final /2017-18 dated 28.03.2018, (2) the grant of refund of Rs. 5, 03, 52, 560/- (IGST) for the month of August 2017 vide RFD-06 Order No. 05/Final/2017-18 dated 28.03.2018 to M/s. Intas Pharmaceuticals Ltd. in respect of refund of unutilized ITC in relation to exports of Goods/Services, appears to be erroneous and amount of Rs. 14,15,17,553/- was required to be recovered from M/s Intas Pharmaceuticals Ltd. under Section 73(1) of the CGST Act, 2017 along with applicable interest.

10. Accordingly, a SCN for recovery of tax and other dues as per orders of Commissioner(A) was issued on 22.10.2020. It is pertinent to mention that the noticee have challenged the Order-in-Appeals No. AHM-EXCUS-002-APP-210&211-18-19 dated 22.03.2019 (issued on 01.05.2019) before Hon'ble High Court of Gujarat vide SCA No.12712 of 2019 in absence of Appellate Tribunal for CGST. In the interim order dated 25.07.2019 while admitting the case the Hon'ble High Court has stayed the recovery of the refund amount. The notice was issued during pendency of the case before Hon'ble High Court as Hon'ble High Court has only restrained the department from coercive recovery and not given any stay on Departmental proceedings for safeguard of Revenue in pursuance of the order of appellate authority.

11. Written Reply of the SCN was filed by the noticee on dated 18.11.2020 wherein assessee has detailed the complete procedure and regulations of refund of ITC and also transitional credit with circumstances of their case. Noticee have submitted that it is incorrect to hold that they have used the entire amount of "Net Input Tax Credit" availed in the month of July 2017 and August 2017 for payment of outward supply of the same month. The Show Cause Notice did not consider transitional credit which was allowed through the Order dated 19.09.2017 but the effect of such credit pertained to opening balance of CGST as on 01.07.2017. Section 140(1) specifically provides that registered person is entitled to take credit the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed date in electronic credit ledger. Noticee submits that they have shown closing balance of Rs.79,89,56,035/- in Central Excise Return filed for the month of June 2017. They filed Trans-1 for carry forward the said credit in GST regime as per Section 140(1) of CGST Act. The Department officers after examining the Trans-1 Form, allowed the transitional credit by allowing its carry forward in electronic credit ledger as on 01.07.2017. Even though the transitional credit was allowed in the month of September 2017, the effect of the credit was given for the month of July 2017 as per the Section 140(1) and therefore, the allegation that there was no unutilized ITC of input or input service used for outward supply is factually incorrect.

12. The transitional ITC carry forwarded from old regime cannot be claimed as cash refund and specifically denied by virtue of Section 142(4) of CGST Act, 2017. The facts and circumstances of the issue in light of CGST act and rules have already been dealt by Commissioner (Appeals). The noticee had a chance to represent their case before the appellate authority and they have done so, which is clear on going through the orders in appeal. It appears that there is no substantial change in facts of the case since then.

13. Personal hearing in the matter was fixed on 11.02.2021 and Shri Kaza Subrahmanyam, Consultant appeared on behalf of the noticee. He reiterated the submissions of written reply and requested to keep the adjudication in abeyance till the decision of Hon'ble High Court in the matter.



14. The matter is pending before Hon'ble Gujarat High Court and the order of Commissioner Appeals is in favour of Revenue .The assessee was sanctioned excessive amount of refund overlooking the provisions of Section 54(3) and Section 142(4) 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 orders in present case is 28.03.2018.

Order

Thus I confirm the recovery of erroneously refunded amount of Rs 141517553/- 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. 14151755/-.

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.12712 of 2019 pending before Hon'ble High Court of Gujarat.



F.No. GST/15-64/OA/2019

(Maruti Tripathi)
Joint Commissioner
CGST, Ahmedabad North.

Date: 18.02.2020

Copy to:

- (1) The Assistant Commissioner, CGST & CE, Division-VI, Ahmedabad-North
- (2) The Superintendent, AR-II, Division-VI, CGST&CE, Ahmedabad-North
- (3) The Assistant Commissioner (RRA) ,Ahmedabad-North
- ~~(3) Guard File~~