



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,  
केंद्रीय कर शुल्क भवन,  
सातवीं मंजिल, पोलिटेकनिक के पास,  
आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



- क फाइल संख्या : File No : **V2(ST)93/A-II/2017-18 / 485-89**
- ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-271-17-18**  
दिनांक Date : **16-01-2018** जारी करने की तारीख Date of Issue **24/01/18**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

- ग Arising out of Order-in-Original No **SD-04/31/AC/2016-17** Dated **31.03.2017**  
Issued by **Assistant Commr STC**, Service Tax, Div-IV , Ahmedabad

- ध अपीलकर्ता का नाम एवं पता  
Name & Address of The Appellants

### **M/s. Torrent Pharmaceuticals Ltd. Ahmedabad**

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-  
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

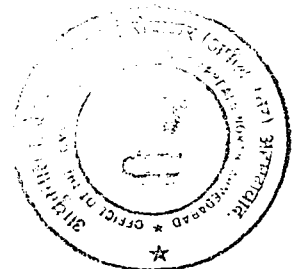
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी.- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of

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crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A2I9k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

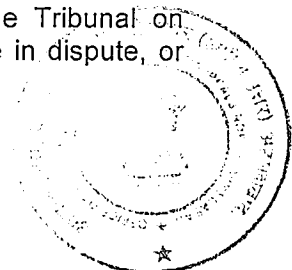
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) 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.

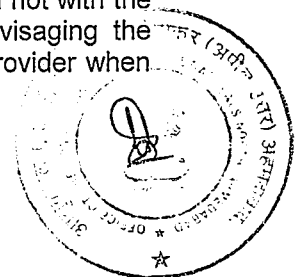


## ORDER-IN-APPEAL

M/s Torrent Pharmaceuticals Ltd., Torrent House, Near Dinesh Hall, Ashram road, Ahmedabad – 380 009 (hereinafter referred to as 'the appellant') was holding Centralized Service tax registration no.AAACT5456ASD006. On verification of the records by the audit officers, facts regarding a litigation in the U.S. District Court, Delaware between the appellant and M/s Wyeth LLC, a Delaware Corporation, 5, Giralda Farms, Madison, New Jersey, 07940 (M/s Wyeth in short) was observed for infringement, invalidity and unenforceability of the U.S. patterns. It was also observed that the appellant had entered into an agreement viz. Settlement and Release Agreement with M/s Wyeth for an out of Court settlement and accordingly, M/s Wyeth had granted a license to the appellant to make use, sell, offer for sale and seek regulatory approval for the drugs mentioned in the license agreement as part of the said agreement. As per its Trial Balance Sheet, the appellant had shown expenditure towards Royalty of Rs.1,22,47,879/- for F.Y. 2013-14 and Rs.63,90,743/- for F.Y. 2011-12. However, the appellant had not paid Service Tax @ 12.36% totally amounting to **Rs.23,03,734/-**. Therefore, a Show Cause Notice F.No.ST/15-09/C-VI/APXIV/FAR-190/R.P.02/14-15 dated 01/04/2015 (hereinafter the 'SCN') was issued to the appellant proposing to classify the services rendered by M/s Wyeth as '**temporary transfer of IPR service**' under **erstwhile Section 65(105)(zr)** of the Finance Act, 1994 for the period upto 30/06/2012 and thereafter under **Section 66E(c) *ibid***; demanding service Tax amounting to Rs.23,03,734/- along with interest and proposing to impose penalty on the appellant under Section 76, Section 77(1) &(2) and under Section 78 of the Finance Act, 1994. The SCN was adjudicated *vide* Order-in-original No.SD-04/31/AC/2016-17 dated 31/03/2017 (hereinafter referred to as 'the impugned order') issued by the Assistant Commissioner, Division-IV, Service Tax, Ahmedabad (hereinafter referred to as 'the adjudicating authority'). In the impugned order the reworked demand amount of Rs.21,58,023/- was confirmed along with interest and penalties were imposed under Section 77(1)&(2) and Section 78 *ibid*. The proposal for penalty under Section 76 *ibid* was dropped.

3. Aggrieved by the impugned order, the appellant has preferred the instant appeal mainly on the following grounds:

- 1) Since the amount of royalty payable under the agreement had not been claimed by M/s Wyeth LLC since the past three years, the appellant had reversed the provisional entries made in the books of accounts *vide* Entry No. 1000215595, 1000215608 and 1000215625 and as such, no Service Tax liability arises. The premise on which the SCN proceeded was non existent. The adjudicating authority had assumed that there was no reason for the appellant not to pay the royalty amount.
- 2) Payment of Royalty cannot be treated as consideration for providing any service.
- 3) In the appellant's case, the power to tax transfer of right to use goods was within the legislative competence of the State Legislature under Entry 54 of List II and not with the Union under List I. There is no provision in the Finance Act, 1994 envisaging the deemed service provider to issue invoice on behalf of the actual service provider when Service Tax was payable under reverse charge mechanism.

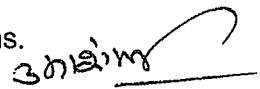


4. Personal hearing in the appeal was held on 01/12/2017. Ms Madhu Jain, Advocate and Mr. Ankit Jani, Assistant Manager (Taxation) and authorized person for the appellant appeared. The Learned Advocate reiterated the grounds of appeal. She made additional written submissions. In the additional submissions, copies of the relevant provisions and case laws relied upon in the grounds of appeal were submitted.

5. I have carefully gone through the facts of the case on records and grounds of appeal filed by the appellant. The principal ground adduced by the appellant in the present appeal is that the adjudicating authority had confirmed the demand for Service Tax, interest and penalties on the basis of assumption on the basis of expenditure entry towards royalty payment made in the appellant's Profit & Loss Account and not considered the reversal of such provisional entry at a later date. I find that as per the findings of the adjudicating authority in paragraph 5.5 of the impugned order, it has been conjectured that if no payment had been made than why was the appellant involved in a law suit with M/s Wyeth; as to why the appellant had an out of court settlement and as to why provisions for payment of royalty were made in the books of accounts of the appellant. However, no fact or evidence has been adduced to establish that in spite of the non-payment, the impugned service was actually rendered by M/s Wyeth and received by the appellant. In order to render the demand for Service Tax and interest as well as penalties sustainable, it is required to be verified and established by way of investigation that the services were actually rendered by the provider having no office in India and as recipient of such service the appellant had failed to pay Service Tax by reverse charge mechanism. Therefore, the case is remanded back to the adjudicating authority for adducing evidence in a reasonable order by following the principles of natural justice.

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

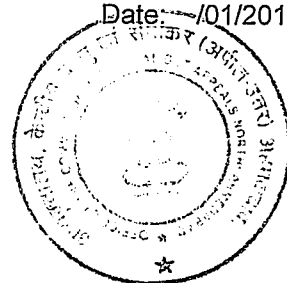
The appeal filed by the appellant stands disposed of in the above terms.



(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 01/01/2018



Attested



(K.P. Jacob)

Superintendent (Appeals-I)  
Central Excise, Ahmedabad.

By R.P.A.D.

To

M/s Torrent Pharmaceuticals Ltd.,  
Torrent House, Near Dinesh Hall,  
Ashram Road,  
Ahmedabad

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: VII, Ahmedabad (North).
5. Guard File.
6. P.A.