

	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015	7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
☎ 079-26305065		टैलेफैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): **V2(ST) 219/A-II/ 2016-17 & V2(STC)36/A.N/Appeals/17-18** /1363 to 1367

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-95-96-17-18**

दिनांक (Date): **28/09/2017**, जारी करने की तारीख (Date of issue): _____

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-II), अहमदाबाद, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No. (i) **SD-02/REF-175/VJP/2016-17** Dated: **20.10.206** (ii) **SD-02/REF-322/VJP/2016-17** Dated: **13.04.2017**

issued by: Assistant Commr STC Commissioner, Service Tax (Div-II), Ahmedabad

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Carbogen Amcis(India) Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person an aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

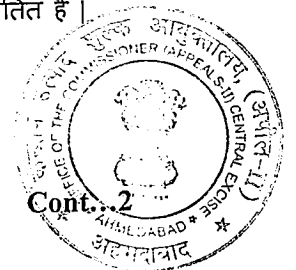
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following- case, governed by first provision to sub-section (1) of Section-35:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

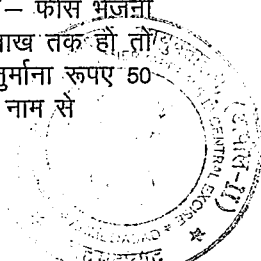
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या उससे कम है वहां रूपर 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक है तो रूपर 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहां रूपर 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील वाखिल करने के लिए पूर्व शर्त बना दिया गया है।

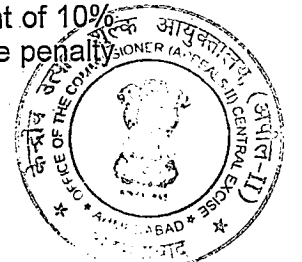
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस सन्दर्भ 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।

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

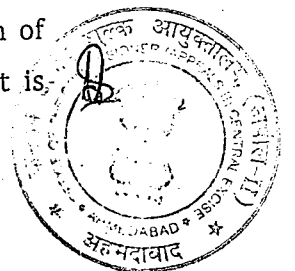
M/s Carbogen Amcis (India) Limited (Now, Dishman Carbogen Amcis Limited), 2nd Floor, Bhadraj Chamber, Swastik Cross Roads, Navrangpura, Ahmedabad 380 009 (henceforth, "appellant") has filed the following two appeals against the Orders-in-Original dated 20.10.2016 and 13.4.2017 (henceforth, "impugned orders") passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (henceforth, "adjudicating authority") rejecting the refunds filed by the appellant.

Appeal No.	Order-in-Order No. & date	Amount involved	Period involved
V2(ST) 219/A-II/16-17	SD-02/REF-175/VJP/2016-17 dated 20.10.2016	Rs.70,70,000	Jan 2016 to Mar 2016
V2(STC)36/AN/Appeals/17-18	SD-02/REF-322/VJP/2016-17 dated 13.4.2017	Rs.36,71,800	Oct 2016 to Dec 2016

2. Briefly stated, the facts of the case are that the appellant, having service tax registration, entered into a contract with Carbogen Amcis AG, Switzerland (henceforth, "Carbogen Amcis AG") for providing technical testing and analysis services. The appellant procured these services from Dishman Pharmaceuticals and Chemicals Ltd (henceforth, "Dishman Pharma") and took Cenvat credit of service tax paid by Dishman Pharma, considering the technical testing and analysis services procured from Dishman Pharma as input service for providing technical testing and analysis services to Carbogen Amcis AG. The appellant considered the technical testing and analysis services provided to Carbogen Amcis AG as export of services within the meaning of rule 6A of the Service Tax Rules, 1994 and filed refund claims under rule 5 of the Cenvat Credit Rules, 2004 (henceforth, "Cenvat Rules") for the service tax paid on the services procured from Dishman Pharma. The services provided by Dishman Pharma to the appellant, as per department, did not fall under the definition of 'input service' defined under rule 2(l) of the Cenvat Rules as they were identical to the services provided by the appellant, and therefore, not eligible for Cenvat credit. The adjudicating authority, in his impugned orders, rejected the refund claims after issuing the show cause notices. The appellant is in appeal against rejection of refund claims.

3. The grounds of appeal, in very brief, are as follows-

3.1 As per appellant, service procured by him is well within the definition of 'input service' under rule 2(l) of the Cenvat Rules and hence, Cenvat credit is,



admissible; that it would not have been possible to provide services to the overseas client without availing the services from Dishman Pharma.

3.2 In absence of any machinery provision to deny credit on identical services, restriction on availment of credit cannot be imposed.

3.3 The appellant disagrees with the adjudicating authority's view that place of provision of service is in taxable territory (India) and service provided by the appellant cannot be considered as export of service. According to appellant, place of provision of service in this case, as per rule 3 of the Place of Provision of Services Rules, 2012 (POPS rules) is outside India and consideration has been received in foreign currency and therefore, as per rule 6A of the Service Tax Rules, transaction between appellant and Carbogen Amcis AG has to be treated as export.

3.4 The appellant states that post amalgamation of the appellant company with the Dishman Pharma w.e.f. 1.1.2015, Cenvat credit of service tax paid on services provided by Dishman Pharma should be regarded as service to self and credit so availed should be refunded.

4. A personal hearing was held on 14.9.2017, wherein Shri Siladitya Sarkar, Shri Vimal Vadhiya and Shri Jayesh R Shah represented the appellant and reiterated the grounds of appeal. Also, the representatives gave additional written submissions and explained the provisions of rule 2(l) of the Cenvat Credit Rules, 2004.

5. I have carefully gone through the appeal papers. The refund claims made by the appellant under rule 5 of the Cenvat Rules have been rejected by the adjudicating authority mainly on two grounds - Cenvat availed is not admissible to the appellant as the technical testing and analysis service procured from Dishman Pharma cannot be considered an input service under rule 2(l) of the Cenvat Rules; and service provided by the appellant cannot be treated as export as the place of provision of service is within India.

5.1 As per rule 2(l) *ibid*, 'input service' means *any service used by a provider of output service for providing an output service*. According to adjudicating authority, service provided by the appellant to the foreign client is the same which was procured from Dishman Pharma and therefore cannot be treated as an output service of the appellant.

5.2 First of all, appellant, as mentioned in his appeal, had entered into an agreement with the foreign client to provide services for development of molecule, managing the entire supply chain as well as undertaking the drug master file (DMF) and regulatory filings, and only a part of this entire activity was outsourced to Dishman Pharma. If this is the case, it is wrong to say that the input service as such was exported.

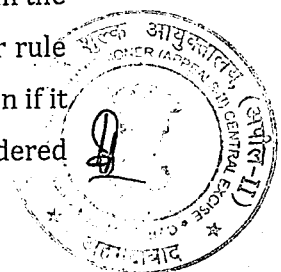


5.3 Further, from 1.7.2012, 'service' was defined as any activity carried out by a person for another for consideration. The term 'activity', as explained in Education Guide Note 2.1, may include an act done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility, etc. Therefore, even if the appellant has exported the input service as such, he has carried out an activity for the foreign client in whatever manner, under an agreement and for a consideration. Thus, the appellant has certainly provided a service, and the technical testing and analysis service outsourced for this purpose has to be treated as an input service.

5.4 With regard to place of provision of service, since technical testing and analysis appears to have been conducted for the purpose of developing some new molecule, only some sample drugs or sample material might have come to the appellant for testing and analysis. This implies that the drug or substance received for testing ceased to exist in the form it was received by the appellant. If this is the case or something similar, rule 4 of the Place of Provision of Services Rules, 2012 is inapplicable in view of Mumbai Tribunal's decision in the case of Pr. Commr. of Central Excise v. Advinus Therapeutics Ltd, Pune [2017(51) STR 298 (Trib.-Mumbai)], wherein it has been held that if the goods cease to exist in the form in which it was supplied, it cannot be said that the services have been provided in respect of goods, if it cannot be denied that services have been rendered on the goods. Therefore, the adjudicating authority needs to revisit the facts and decide the place of provision of services accordingly in light of Mumbai Tribunal's decision in the case of Pr. Commr. of Central Excise v. Advinus Therapeutics Ltd, Pune [2017(51) STR 298 (Trib.-Mumbai)].

5.5 With regard to appellant's argument that when the appellant-company and Dishman Pharma became a single entity after amalgamation w.e.f. 1.1.2015 pursuant to Gujarat High Court's approval vide order dated 16.12.2016, any transaction between the two amalgamating entities shall be considered as service to self and no service tax shall be liable to be paid. It is true that no service tax liability arises in case of self service, however, this argument is not very relevant considering that during the period of dispute, two entities have worked separately, or else there should not have been any payment of service tax by Dishman Pharma for the services provided to the appellant.

6. The department's main ground for denying the benefit of credit is that input service and output service are identical or same. This, in my view, has no basis in the law as there seems to be no restriction in the definition of input service under rule 2(1) *ibid* that says that input service and output service cannot be identical. Even if it is a back to back transfer of service, the fact remains that the appellant has rendered



a service to its foreign client and denying the benefit of credit on the services used for this purpose is in violation of the spirit of Cenvat Rules. Sub-contracting or even back to back sub-contracting is a very well known business transaction in the service industry. It is also true that unlike goods, services are intangible in nature and cannot be possessed or transferred to another person. It is therefore appropriate for me to remand the matter back to the adjudicating authority for examining whether any express provision of the Cenvat Rules prohibits the appellant to take credit on the same service. The adjudicating authority should pass a speaking order after giving the appellant an opportunity of personal hearing.

7. The impugned orders are therefore set aside and appeals filed are allowed by way of remand to the adjudicating authority.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date: 28.09.2017

Attested

S. Hudda
(Sanwamal Hudda)
Superintendent
Central Tax (Appeals), Ahmedabad

By R.P.A.D.

To,
M/s Carbogen Amcis (India) Limited
(Now, Dishman Carbogen Amcis Limited),
2nd Floor, Bhadrach Chamber, Swastik Cross Roads,
Navrangpura, Ahmedabad 380 009

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad -North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad South.
4. The Asst./Deputy Commissioner, Central Tax, Division-VII, Ahmedabad North
- ✓ 5. Guard File.
6. P.A.



