



आयुक्त का कार्यालय, (अपीलस)  
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ : 079-26305065

टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)131 /North/Appeals/2018-19 7628 to 7632

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-119-18-19

दिनांक Date : 20-Nov-18 जारी करने की तारीख Date of Issue 13/12/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No 38/Refund/2018 Dated 11-May-18 Issued by Deputy Commissioner , Central GST , Div-IV , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता  
Name & Address of The Appellants

**M/s FTF Pharma Pvt Ltd**

इस अपील आदेश से अरांतुष्ट 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 :-

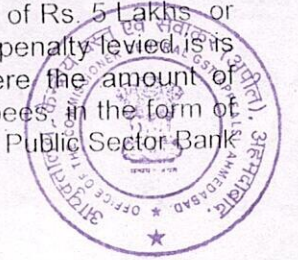
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल 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 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 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 फॉर्म 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 **अधीक्षक** 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 वर्चित 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, 1994 की धारा 39 के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 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 है

- (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 अर्जी 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.

रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065



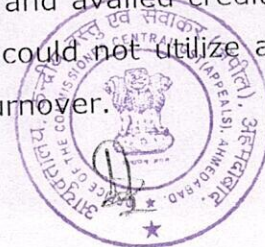


ORDER-IN-APPEAL

M/s FTF Pharma Pvt Ltd, Survey No.183-231, Paiki, First Floor, Above Hundai Service Centre, S.G.Highway, Navapura Char Rasta, Taluka Sanand, Dist, Ahmedabad [hereinafter referred to as "the appellant"] has filed this appeal against Order-in-Original No.38/Refund/2018 dated 11.05.2018 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner of CGST, Division-IV, Ahmedabad North [hereinafter referred to as "the adjudicating authority"].

2. The facts of the case is that the appellant had filed a refund claim of Rs.72,00,189/- on 30.12.2018 under Notification No.27/2012-C(NT) dated 18.06.2012 as amended. Vide OIO No.SD-04/REF-82/AK/2016-17 dated 16.03.2017, the jurisdictional Assistant Commissioner has rejected the said claim by holding that during the course providing service viz Technical testing and Analysis of drugs, the physical presence of active substances/reference product as required and accordingly as per Clause 4 of Place of Provisions of Service Rules, 2012, the place of provision of the output service is taxable territory in India and the service will not qualify as Export of Service as per Rule 6(A) of Export of Service Rules of Service Tax Rules, 1944. The Commissioner (Appeals) vide OIA No.AHM-EXCUS-002-APP-157-17-18 dated 03.11.2017 has remanded the matter to original adjudicating authority to determine as to whether the impugned service falls under the category of "Scientific and Technical Consultancy Service" or "Technical Testing and Analysis Service". Accordingly, the adjudicating authority has determined the service as "Technical Testing and Analysis Service" and sanctioned the refund claim of Rs.36,90,860/- and rejected the refund claim amounting to Rs.35,09,329/- on the grounds the credit taken by the appellant does not pertains the relevant quarter of January 2016 to March 2016.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that the appellant is providing research and development services mainly to foreign based client in relation to drugs, pharmaceutical productions and formulations; that the formulation of new drug is a complex process taking considerable time to complete whole service. For providing such service, they had incurred various expenditure viz., technical testing and analysis service, consultancy service etc; while receiving these services, the appellant has paid service tax amounting to Rs.72,00,189/- and availed credit accordingly. The invoices wise break up of each invoices submitted by them was verified and accepted by the adjudicating authority. They further submitted that they had incurred various expenditures during whole year for services invoiced and exported during the month of March 2016; that they had incurred various expenditures during whole year in relation to export invoices issued in the month of March 2016 and availed credit in respect of same. The appellant has taken credit properly but could not utilize against output liability or file refund in the absence of any export turnover.





4. Personal hearing in the matter was granted on 24.10.2018. Shri Dipam Pael and Nirav Malkun, Chartered Accountants appeared for the same and reiterated the grounds of appeal. They further stated that as per circular No.120/01/2010-ST dated 19.01.2010, unutilized cenvat credit of previous quarter is allowable if there are no exports.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue to be decided in the matter is regarding eligibility of refund claim of Rs.35,09,329/- rejected by the adjudicating authority on the grounds that the said amount does not pertain to the period of quarter from January 2016 to March 2016 for which the appellant filed the refund claim.

6. I observe that the appellant has filed the refund claim of Rs.72,00,189/- under notification No.27/2012-C(NT) dated 18.06.2012 as amended; that the said notification allows refund of unutilized CENVAT credit of input/input services utilized for manufacture of exported goods as per conditions and procedures prescribed. The issue was earlier remanded by the appellate authority to determine the classification of service, vide OIA dated 03.11.2017 and accordingly, the adjudicating authority has classified the service under "Technical Testing and Analysis Service" and sanctioned the refund claim of Rs.36,90,860/-. The adjudicating authority has rejected the refund claim amounting to Rs.35,09,329/- on the grounds the credit taken by the appellant does not pertain to the relevant quarter of January 2016 to March 2016.

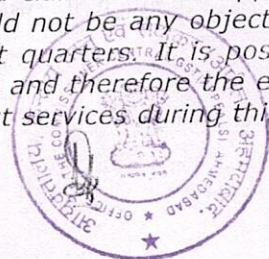
7. The contention of the appellant is that rejecting the claim amounting to Rs. 35,09,329/- is not correct as they have taken credit from April 2015 to March 2016 for Rs.75,91,346/- correctly and could not file refund under the said notification in absence of export turnover; that as they have received export turnover in the quarter of January 2016 to March 2016, they filed the refund claim of total credit taken. The adjudicating authority has not accepted the said contention and rejected the claim except the credit pertains to the said quarter. The order of the adjudicating authority is not correct as per CBEC circular No. 120/01/2010-ST dated 19.01.2010. Vide the said circular, a clarification issued in the following point is as under.

"2 (d)

*Though the notification prescribes that refund claims should be filed quarterly in a financial year, it is not clear whether the refund is eligible only of that credit which is accumulated during the said quarter or the accumulated credit of the past period can also be refunded;*

**"3.3 Quarterly refund claims [para 2(d) above] :**

*As regards the quarterly filing of refund claims and its applicability, since no bar is provided in the notification, there should not be any objection in allowing refund of credit of the past period in subsequent quarters. It is possible that during certain quarters, there may not be any exports and therefore the exporter does not file any claim. However, he receives inputs/input services during this period. To illustrate, an*





V2(ST)131/North/Appeals/18-19

exporter may avail of Rs. 1 crore as input credit in the April-June quarter. However, no exports may be made in this quarter, so no refund is claimed. The input credit is thus carried over to the July-September quarter, when exports of Rs. 50 lakh and domestic clearances of Rs. 25 lakh are made. The exporter should be permitted a refund of Rs. 66 lakh (as his export turnover is 66% of the total turnover in the quarter) from the Cenvat credit of Rs. 1 crore availed in April-June quarter. The illustration prescribed under para 5 of the Appendix to the notification should be viewed in this light. However, in case of service providers exporting 100% of their services, such disputes should not arise and refund of Cenvat credit, irrespective of when he has taken the credit, should be granted if otherwise in order. Such exporters may be asked to file a declaration to the effect that they are exporting 100% of their services, and, only if it is noticed subsequently that the exporter had provided services domestically, the proportional refund to such extent can be demanded from him."

7. The above referred circular clearly stipulates the appellant can apply refund of unutilized CENVAT credit pertains to previous quarter carried over to subsequent quarter due to absence of exports. In the circumstances, the appellant has rightly applied for the refund claim of total unutilized CENVAT credit available with him in the quarter January 2016 to March 2016. Therefore, I hold that the appellant is eligible for refund, if all other conditions are satisfied.
8. In view of above discussion, I set aside the impugned order and allow the appeal filed by the appellant with consequential relief.

*U. Shankar*

(उमा शंकर)

आधुक्त (अपील्स)

Date : .11.2018

Attested

*Mohan V.V.*  
(Mohan V.V.)  
Superintendent (Appeals)  
CGST, Ahmedabad

By R.P.A.D

To  
FTF Pharma Pvt Ltd,  
Survey No.183-231, Paiki, First Floor,  
Above Hundai Service Centre, S.G.Highway,  
Navapura Char Rasta, Taluka Sanand, Dist, Ahemdabad  
Copy to:-

1. The Chief Commissioner, CGST, Ahmedabad Zone .
2. The Commissioner, CGST, Ahmedabad-North
3. The Deputy/Assistant Commissioner, CGST Dn-III, Ahmedabad North.
4. The Assistant Commissioner, System-Ahmedabad-north.
5. Guard File.
6. P.A. File.





