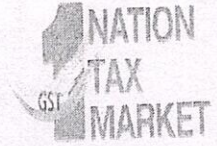




आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ : 079-26305165

टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No. : V2(ST)75 /North/Appeals/2018-19 **7811/07815**

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-126-18-19**

दिनांक Date : **20-Nov-18** जारी करने की तारीख Date of Issue **11/12/19**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No **35/Refund/2018** Dated **17-Apr-18** Issued by **Assistant Commissioner** , Central GST , Div-IV , Ahmedabad North.

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

M/s Amneal Pharmaceuticals pvt ltd

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 :-

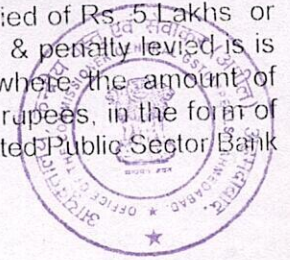
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हॉस्पिटल कम्पाउण्ड, मेघानी 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 सकती 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 5000/- 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 accompanied 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 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 सकेंगी 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 निदेशों के 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 63 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 : 26305025



ORDER IN APPEAL

M/s. Amneal Pharmaceuticals Pvt. Ltd., Plot No.15, 16 & 17, Pharmez, Special Economic Zone, Sarkhej-Bavla National Highway No.8A, Village Matoda, Tal. Sanand, District Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number 35/REFUND/2018 dated 17.04.2018 (*hereinafter referred to as 'impugned order'*) passed by the Deputy Commissioner, CGST & Central Excise, Division-IV, Ahmedabad-North (*hereinafter referred to as 'adjudicating authority'*).

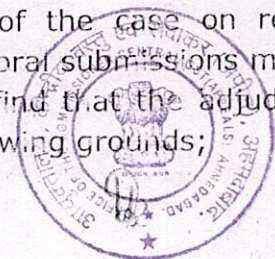
2. The facts of the case, in brief, are that the appellants are a unit in Special Economic Zone, engaged in the manufacture of pharmaceutical products and, they were holding Service Tax registration number AAGCA0781KSD006. The appellants are a functional unit under Pharmez, Sarkhej Bavla National Highway No. 8A, Village Matoda, Tal. Sanand, District Ahmedabad and are registered with Office of the Development Commissioner, KASEZ, Ministry of Commerce, Ahmedabad.

3. The appellants had filed a refund claim amounting to ₹ 14,63,036/- on 16.01.2018 under Notification Number 12/2013-ST dated 01.07.2013 for the period April 2017 to June 2017 with the adjudicating authority. On scrutiny of the refund claim, some discrepancies were noticed in the refund claim and accordingly a show cause notice, dated 15.03.2018, was issued to the appellants. Finally, the adjudicating authority, vide the impugned order, rejected an amount of ₹ 10,81,482/-, out of total refund claim of ₹ 14,63,036/- and sanctioned an amount of ₹ 3,81,544/-.

4. Being aggrieved with the impugned orders the appellants have preferred the present appeals. The appellants stated that the impugned order was passed *ex parte* and thus violated the principle of natural justice. They stated that their submissions were neither considered nor been taken on the record. They stated that they had submitted all the copies of invoices that were not included along with the refund application. Further, regarding the Pre-Audit observation that the refund claim had been filed for the period April 2017 to June 2017 but certain invoices were pertaining to the period January to March 2017, the appellants claimed that para 3(III)(e) of the Notification Number 12/2013-ST dated 01.07.2013 prescribes that the claim of refund shall be filed within one year from the end of month in which actual payment of Service Tax has been made. They further argued that the observation of the Pre-Audit was not included in the show cause notice and hence, the adjudicating authority has traveled beyond the scope of the show cause notice and issued a non-speaking order too. Regarding the issue of 'Renting of Immovable Property service' is not found in the exempted list of services. The appellants argued that said service has been listed as default approved service for SEZ unit vide Instruction Number 79 F. No. D. 12/19/2013-SEZ dated 19th November 2013 as amended at serial number 41 issued by the Ministry of Commerce & Industry (SEZ Division).

5. Personal hearing in the matter was granted and held on 26.10.2018 wherein Shri Pratik R. Mehta, Sr. Manager Corporate Affairs, appeared before me and reiterated the contents of appeal memo.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I find that the adjudicating authority has rejected the refund claims on the following grounds;



(i) Invoices amounting to ₹ 1,61,603/- were not available along with the refund claim.

(ii) Invoices amounting to ₹ 3,68,544/- were ineligible as they were pertaining to the period January 2017 to March 2017 (Pre-Audit observation).

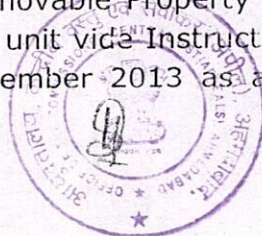
(iii) Renting of Immovable property service is not eligible as per the approval of additional list of taxable services issued vide F. No. Customs/UAC Corres./2016 dated 01.04.2016 (amount involved is ₹ 5,51,335/-).

Now, I will discuss the issues as per the serial number mentioned above.

7. The first issue to be discussed is that some invoices amounting to ₹ 1,61,603/- were not available along with the refund claim. In their grounds of appeal, the appellants have claimed that they had submitted those invoices along with their reply to the show cause notice vide their letter dated 27th April 2018. I find that the appellants had delayed filing the said reply as by then; the impugned order was already issued on 17.04.2018. However, in this regard, I have to consider the plea of the appellants that they were not awarded the opportunity of personal hearing. In paragraph 7 of the impugned order, the adjudicating authority has stated that the appellants were asked to appear for personal hearing (19.03.2018 and 28.03.2018) but they requested for grant of 20 days time to appear for personal hearing. The adjudicating authority is also correct on his stance that refund claims are to be adjudicated within three months as per Section 11B of the Central Excise Act, 1994 made applicable to Service Tax vide Section 83 of the Finance Act, 1994. But, I find that the appellants had the invoices in their possession and it may be that due to certain reasons, they were unable to produce the same at the material time. In view of the above, for the sake of justice in terms of the principles of natural justice, the said invoices need to have a thorough check by the adjudicating authority and if found in order, should be considered with a positive view.

8. Regarding the second issue, that the Invoices amounting to ₹ 3,68,544/- were ineligible as they were pertaining to the period January 2017 to March 2017, I find that the observation was made during Pre-Audit verification. The appellants have tried to counter the same stating that as per para 3(III)(e) of the Notification Number 12/2013-ST dated 01.07.2013, the claim of refund shall be filed within one year from the end of month in which actual payment of Service Tax has been made. The appellants further argued that this issue has been taken by traveling beyond the scope of the show cause notice and without discussing the same in the impugned order, making it a non-speaking one. I have gone through the show cause notice and found that nowhere this issue has been taken nor it has been discussed in the impugned order. The adjudicating authority must look into this aspect while deciding the matter afresh and should specifically quote in his new order, the section/rule under which the issue that has not been alleged in the show cause notice, can be brought in the impugned order to reject a particular portion of the refund claim.

9. Now comes the final issue that Renting of Immovable property service is not eligible as per the approval of additional list of taxable services issued vide F. No. Customs/UAC Corres./2016 dated 01.04.2016. In this regard, the appellants have contended that Renting of Immovable Property service has been listed as default approved service for SEZ unit vide Instruction Number 79 F. No. D. 12/19/2013-SEZ dated 19th November 2013 as amended at



serial number 41 issued by the Ministry of Commerce & Industry (SEZ Division). This issue too needs to be verified as it has not been discussed in the impugned order. The adjudicating authority should verify the applicability of the said instruction in the present case. The adjudicating authority should validate the matter and if found applicable, should sanction the amount of refund claim involved.

10. In view of the above and for the sake of justice, I remand back the case to the adjudicating authority to decide the matter afresh on the basis of my discussion in paragraphs 7, 8 and 9.

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

11. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.



ATTESTED

S. Dutta
(S. DUTTA)

SUPERINTENDENT,
CENTRAL TAX (APPEALS),
AHMEDABAD.

To,

M/s. Amneal Pharmaceuticals Pvt. Ltd.,
Plot No.15, 16 & 17, Pharmez, Special Economic Zone,
Sarkhej-Bavla National Highway No.8A,
Village Matoda, Tal. Sanand,
District-Ahmedabad 382 110

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad zone.
2. The Commissioner, Central Tax, Ahmedabad (South).
3. The Dty/Asstt. Commissioner, CGST, Div-IV, Ahmedabad (North).
4. The Asstt. Commissioner, Central Tax, Systems, Ahmedabad (North).
5. Guard File.
6. P.A. File.

