



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

टेलफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)139 /North/Appeals/2018-19

9114 fo 9118

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-141-18-19

दिनांक Date : 28-Dec-18 जारी करने की तारीख Date of Issue 21/1/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No 56/Refund/2018 Dated 14-Sep-18 Issued by Deputy Commissioner , Central GST , Div-IV , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

**M/s Alidac Pharmaceuticals 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 हास्पिटल कम्पाउण्ड, मेधाणी 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 न्यायापीठ 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 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 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 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, 1994 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 होंगे।

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**

This order arises out of an appeal filed by M/s. Alidac Pharmaceuticals Ltd., Plot No.1A, Zydus Pharma SEZ, Village Matoda, Sarkhej Bavla Highway, Sanand, Ahmedabad-382213 (in short 'appellant') against Order-in-Original No.56/Refund/2018 dtd. 14.09.2018 (in short 'impugned order') passed by the Deputy Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad North Commissionerate (in short 'adjudicating authority').

2. Briefly stated that adjudicating authority vide impugned order rejected the refund claim of Rs.31,548/- filed for the month of June-2017, under Notifn. No.12/2013-ST dated 01.07.2013 for violation of its Condition No. 3(III)(f).

3. Aggrieved with the impugned order, the appellant filed the present appeal wherein, inter alia, stated that:

- The adjudicating authority has failed to appreciate that harmonious interpretation of Para 3(III)(e) and (f) meaning thereby that an assessee can put-up a refund claim any time within one year but not more than one claim per quarter. Therefore, they have not violated the condition no.3(III)(f) as first claim was filed on 20.07.2017 i.e. in the quarter July to Sept-2017 whereas the present claim was filed on 15.06.2018.
- Present claim is for remaining invoices and in the new quarter.
- The legitimate and valid refund claim filed within prescribed time limit of one year u/s 11B cannot be rejected on the criteria of one claim for one quarter.
- It is well settled law that grant of refund for services provided to SEZ is a beneficial legislation and cannot be denied for minor procedural irregularities.

4. Personal hearing in the matter was held on 19.11.2018 and 13.12.2018 however the appellant vide letter dated 12.12.2018 requested to decide the case on merits.

5. I have carefully gone through the appeal memorandum and evidences available on records. I find that the limited issue to be decided is whether the adjudicating authority has rightly rejected the refund claim or otherwise. Accordingly, I proceed to decide the case on merits.

6. Prima facie, I find that the appellant has filed the refund claim under Notifn. No.12/2013-ST dated 01.07.2013. This notifn provides certain conditions and procedure to be followed for claiming refund of service tax paid on the specified services provided to SEZ. The adjudicating authority has rejected the subject refund claim for violation of Condition No.3(III)(f) which provides that the SEZ Unit or the Developer shall submit only one claim of refund under the said notification for every quarter beginning from 1<sup>st</sup> April. As against this, the appellant has contended that harmonious reading of Condition no.3(III)(e) and (f) provides that an assessee can put-up a refund claim any time within one year but not more than one claim per quarter. Therefore, they have not violated the condition no.3(III)(f) as first claim was filed on 20.07.2017 i.e. in the quarter July to Sept-2017 whereas the present claim was filed on 15.06.2018. In this regard, I find that there



is no dispute for other conditions of the said notifiin. I also find that all the refund claims are subject to provisions of Section 11B of the Central Excise Act, 1944 which does not put any restriction on number of claims to be filed within prescribed time limit of one year. It is also contended by the appellant that present claim is for remaining invoices for which payment was received in the new quarter whereas the earlier refund claim was filed for the period in which the payment was received in July to Sept-2017 quarter. I find a force in the plea of the appellant since the substantial benefit accrued cannot be denied merely on procedural lapse as it would result in unduly restricting scope of beneficial provisions under the said notification. I find that said procedural lapse is condonable and refund is admissible as held by the Hon'ble Tribunal, Mumbai in case of Western Cans P. Ltd. Vs. CCE, Mumbai-I reported in 2011(270) ELT-101(Tri.Mum.):

***“Refund of Cenvat credit - Frequency of claim - Notification No. 5/2006-C.E. (N.T.) providing that refund claim should not be submitted more than once in any quarter in a calendar year - Intent of legislature was to avoid multiplicity of refund claim-daily, weekly or invoice-wise - It does not mean that assessee has to file refund claim quarterly, and refund could not be rejected on that ground - Filing of refund once a year would also avoid multiplicity - Section 11B of Central Excise Act, 1944. [para 8]”***

In view of the above discussion and findings, I allow the appeal filed by the appellant with consequential relief as per law and the impugned order is set-aside.

7. 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)

Attested:

(B.A. Patel)  
Supdt.(Appeals)  
Central GST, Ahmedabad.

**BY SPEED POST TO:**

M/s. Alidac Pharmaceuticals Ltd.,  
Plot No.1A, Zydus Pharma SEZ,  
Village Matoda, Sarkhej Bavla Highway,  
Sanand, Ahmedabad-382213.

**Copy to:-**

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad North (RRA Section).
- (3) The Deputy Commissioner, CGST, Division-IV, Ahmedabad North.
- (4) The Asstt. Commr(System), CGST, Ahmedabad North.  
(for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.