



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

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क फाइल संख्या : File No : **V2(ST)203 /North/Appeals/2018-19 /10402 to 10406**
ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-002-APP-227-18-19**
दिनांक Date : **29/03/2019** जारी करने की तारीख Date of Issue **7/5/2019**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **15/AC/Demand/S.Tax/18-19** Dated **31/12/2018** Issued by **Assistant Commissioner** , Central GST , Div-I , Ahmedabad North.

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

M/s Halcyon Labs 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:-

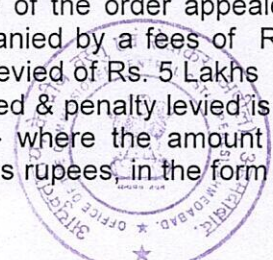
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल 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 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



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 (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, 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 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 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.

रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065

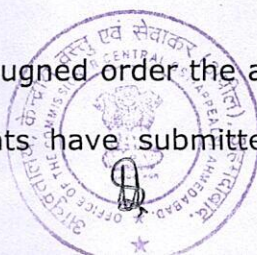


ORDER IN APPEAL

M/s. Halcyon Labs Pvt. Ltd., Plot No. 409, Phase-IV, GIDC, Naroda, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against Order-in-Original number 15/AC/Demand/S.Tax/18-19 dated 31.12.2018 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST & Central Excise, Division-I (Naroda), Ahmedabad-North (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the Appellants are engaged in the manufacture of Bulk Drugs and also engaged in providing/receiving services commission agents. They were holding erstwhile Central Excise registration number AAACV8781CXM002 and erstwhile Service Tax registration number AAACV8781CST001. During the course of audit, it was observed that the appellants had availed services like membership registration from US FDA, which enabled them to export their products to the US. For the said registration, the appellants had paid an amount of ₹ 15,59,228/- to the US FDA. Thus, it was concluded that as per the provisions of Reverse Charge Mechanism, as the service provider (US FDA) is situated in non-taxable territory, the appellants, being the service recipients, were required to pay 100% Service Tax on the services received by them from the former. As the appellants did not agree to the audit objection, a show cause notice, dated 20.06.2017, was issued to them which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax amounting to ₹ 1,92,720/- under Section 73(1) of the Finance Act 1994 and ordered recovery of interest under Section 75 of the Finance Act 1994. The adjudicating authority, vide the impugned order, also imposed penalty under Sections 70(1), 77(1)(a) and 78 of the Finance Act 1994.

3. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that the adjudicating



authority did not appreciate/discuss the contentions of the appellants. The appellants added that after the amendment of Constitution and introduction of GST laws, it is no longer permissible to commence fresh proceedings under the Finance Act, 1944. They further stated that the payment of ₹ 15,59,228/- was made to the US Government. As per the laws and regulations prevailing in US, any export and sale of pharmaceutical drugs and medicaments, within USA, require prior approval of US Drugs Administration and for the approval, required fees are to be paid to the US FDA. Therefore, US FDA has not provided any service to the appellants. Accordingly, they requested to set aside the impugned order.

4. Personal hearing in the matter was granted and held on 27.03.2019 wherein Shri S. J. Vyas, Advocate, appeared before me and reiterated the contents of appeal memo and stated that the issue is revenue neutral.

5. 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. At the very onset, I would like to discuss the claim of the appellants that "after the introduction of GST laws, it is no longer permissible to commence fresh proceedings under the Finance Act, 1944". In Section 174 of the CGST Act, 2017 a proper clarification, in this regard, has been given. I produce below concerned portion of the said section;

"SECTION 174. Repeal and saving.- (1).....

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994) (hereafter referred to as "such amendment" or "amended act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

(a).....

(b).....

(c).....

(d).....

(e) affect any investigation, inquiry, verification

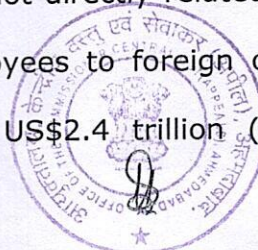


(including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f)....."

Thus, from the above, it is quite clear that the argument tabled by the appellants does not have a solid ground to stand and therefore, without any more discussion, I direct the appellants not to raise this issue in future.

6. Now comes the actual issue that whether the adjudicating authority has rightly demanded Service Tax amounting to ₹1,92,720/- under Section 73(1) of the Finance Act 1994 or otherwise. On going through the impugned order and the grounds of appeal, I find that the appellants had paid an amount of ₹15,59,228/- to the US FDA to obtain membership registration. Now, on further study, I came to know that The US FDA is a federal agency of the United States Department of Health and Human Services, one of the United States federal executive departments. The FDA is responsible for protecting and promoting public health through the control and supervision of food safety, tobacco products, dietary supplements, prescription and over-the-counter pharmaceutical drugs (medications), vaccines, biopharmaceuticals, blood transfusions, medical devices, electromagnetic radiation emitting devices, cosmetics, animal foods & feed and veterinary products. The US FDA was empowered by the US Congress to enforce the Federal Food, Drug and Cosmetic Act. The FDA also enforces other laws many of which are not directly related to food or drugs. In 2008, the FDA began to post employees to foreign countries including India. The FDA regulates more than US\$2.4 trillion (approx) worth of



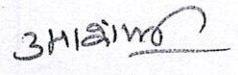
consumer goods and about 25% of consumer expenditures in the US. This includes food sales, drugs, cosmetics and vitamin supplements. Much of these expenditures are for goods imported into the US. Nearly half of the budget of FDA is generated by user fees and the pharmaceutical firms pay the majority of these fees.

Thus, from the above, it can be concluded that the amount paid by the appellants was a mandatory fees collected by the Federal Agency. This was by no way part of any service for business augmentation. Thus, I understand that the fees was paid to the US government as per the law prevalent in that country and therefore, I proclaim that the appellants are not liable to pay any Service Tax against the payment made by them to the US govt.

7. In view of the discussion held above, I allow the appeal filed by the appellants and set aside the impugned order issued by the adjudicating authority.

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

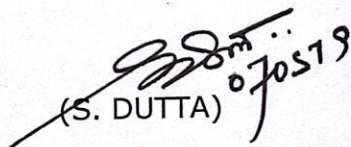
8. The appeal filed by the appellants stands disposed off in above terms.


(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED


(S. DUTTA) 07/05/19

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.



To,
M/s. Halcyon Labs Pvt. Ltd.,
Plot No. 409, Phase-IV,
GIDC, Naroda,
Ahmedabad-382 023.

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad-North.
3. The Dy. / Asstt. Commissioner, Central Tax, Div-I, Ahmedabad-North.
4. The Assistant Commissioner (System), HQ, Ahmedabad-North.
- ✓ 5. Guard file.
6. P.A file.



