



सत्यमेव जयते

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

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय  
Central GST, Appeal Commissionerate- Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
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7/33707137

रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.) : V2(30)121 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-83-18-19

दिनांक (Date): 23-Oct-18 जारी करने की तारीख (Date of issue): 16/11/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित

Arising out of Order-In-Original No 01/DC/D/2018-19/AKJ Dated: 22/06/2018

issued by: Deputy Commissioner-Central Excise (Div-IV), Ahmedabad North

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

M/s Intas Pharmaceuticals Limited

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 proviso to sub-section (1) of Section-35 ibid:

(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।



(b) In case of rebate or duty or excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल है।

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

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट 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 (न.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(१) 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. के 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.

(२) 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 रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-  
Appeal to Customs, 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 सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सावधानिक क्षेत्र के बैंक का 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 अनुसूची-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 दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

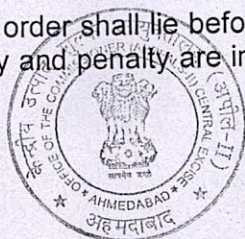
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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. Intas Pharmaceuticals Limited, Matoda, Tal-Sanand, Dist-Ahmedabad(henceforth, "appellant") has filed the present appeal against the Order-in-Original No.01/DC/D/2018-19/AKJ dated 21.06.2018(henceforth,"impugned order") passed by the Deputy Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad-North(henceforth, "adjudicating authority").

2. Briefly stated, the facts leading to present appeal are that based on audit by CERA, a periodical show cause notice demanding reversal of CENVAT credit Rs.42,05,320/- availed during February 2016 to June 2017 was issued to the appellant which was decided under impugned order disallowing said CENVAT credit. It was held by the adjudicating authority that CENVAT credit of service tax paid on expenses of sales promotional marketing, selling, marketing literature, product registration/promotion etc and on sitting fees under the head 'Business Auxiliary Services' do not fall under the definition of 'input service' as defined under Rule 2(l) of Cenvat Credit Rules 2004.

3. Being aggrieved with the impugned order, the appellant preferred this appeal contesting *inter alia* that CENVAT credit of service tax paid on 'Business Auxiliary Services' which covers sales promotion services is admissible to them; that definition of input service includes sales promotion and market research services as eligible input service; that interest is not demandable and penalty is not imposable; that judgement in case of Cadila Healthcare v/s CCE 2013-TIOL-12-HC-AHM-St) involves service of commission agent and hence not applicable in their case. In support of their claim, they also cited various case laws i.e. in , viz. 2016 (44) STR 427(Tri.Chennai) Steadman Pharmaceuticals v/s CCE Chennai, 2016 (45) STR 81(Tri.Mumbai)Maharashtra Seamless Ltd v/s CCE Raigadh, 2017 (49) STR 261(P&H) CCE Delhi v/s Maruti Suzuki India Ltd., etc.,

4. In the personal hearing held on 11.10.2018, Shri Kaza Subrahmanyam, consultant, reiterated the grounds of appeal and explained that it's a sales promotion and not sales commission which has been noted by the Tribunal in their own case for past period and submitted copy of order No. A/11928-11929/2018 dated 28.08.2018 CESTAT,WZB,Ahmedabad.



5. I have carefully gone through the appeal wherein the issue of eligibility of CENVAT credit of service tax paid on expenses related to sales promotional marketing, marketing literature, product registration/promotion etc paid under the head 'Business Auxiliary Services' is under dispute and it needs to be decided whether said services falls under the definition of 'input service' as defined under Rule 2 (l) of Cenvat Credit Rules 2004 or otherwise. The appellant is a manufacturer of PP medicaments and in order to check the admissibility of Cenvat credit, it needs to be ascertained whether the service under question is used in manufacturing of PP medicaments and for clearance up to place of removal. The undisputed fact is that the head office of the appellant has paid service tax on sales promotion and market expenses made in foreign currency under the head 'Business Auxiliary Services' under reverse charge mechanism which have been distributed to the factory of the appellant by issuing Input Service Distribution(ISD) invoices. It would be pertinent to mention here that the appeals filled by the appellant on same issue of admissibility of Cenvat credit in respect of earlier period was rejected under OIA No.AHM-EXCUS-002-APP-197-198-17-18 dated 12.12.2017. However, CESTAT,WZB, Ahmedabad has settled the issues in favor of the appellant under its order No. A/11928-11929/2018 dated 28.08.2018 by allowing appeal filed against said order dated 12.12.2017 wherein it is held that services in question are input service in term of definition of input service and accordingly credit is admissible. The decision of the adjudicating authority that service tax paid under the 'Business Auxiliary Services' on business promotion expenses, marketing expenses product registration/promotion expenses, payment of sitting fees, marketing expense, foreign MR/CM expense, reimbursement of marketing/ registration expense etc are not related to manufacturing or clearing of final product but related to sales activities(i.e.after manufacturing) was reversed by Hon'ble Tribunal's order supra and said service were considered as input service. Dispute involved under present appeal also pertains to eligibility of Cenvat credit on service tax paid on sales promotion marketing expense, selling expense, marketing literature expense, product registration/promotion expenses and payment of sitting fees etc., which Hon'ble CESTAT has settled in favor of the appellant under order referred above.

6. It is held in Special Civil Application No.1784 of 2016 dated 28-4-2016 in case of Lubi Industries LLP v/s UOI by Hon'ble High Court of Gujarat reported in 2016 (337) E.L.T. 179 (Guj.) that departmental authorities would



be bound by the judicial pronouncements of the statutory Tribunals, related portion of which is reproduced below:

6. In our opinion, the Assistant Commissioner committed a serious error in ignoring the binding judgment of superior Court that too in case of the same assessee. The principle of precedence and judicial comity are well established in our legal system, which would bind an authority or the Court by the decisions of the Coordinate Benches or of superior Courts. Time and again, this Court has held that the **departmental authorities** would be bound by the judicial pronouncements of the statutory Tribunals. Even if the decision of the Tribunal in the present case was not carried further in appeal on account of low tax effect, it was not open for the adjudicating authority to ignore the ratio of such decision. It only means that the Department does not consciously agree to the view point expressed by the Tribunal and in a given case, may even carry the matter further. However, as long as a judgment of the Tribunal stands, it would bind every Bench of the Tribunal of equal strength and the departmental authorities taking up such an issue. An order that the adjudicating authority may pass is made appealable, even at the hands of the Department, if the order happens to aggrieve the Department. This is clearly provided under Section 35 read with Section 35E of the Central Excise Act. Therefore, even after the adjudicating authority passes an order in favour of the assessee on the basis of the judgment of the Tribunal, it is always open to the Department to file appeal against such judgment of the adjudicating authority.

7. The present appeal pertains to further period on identical issue, I am bound to follow the Hon'ble Tribunal's order supra and accordingly, I allow the appeals and set aside the impugned order.

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:

Attested

*(D.A. Parmar)*  
Superintendent,  
Central Tax (Appeals)  
Ahmedabad

By R.P.A.D.

To,  
Intas Pharmaceuticals Ltd.,  
Plot no. 457 & 458, Village-Matoda,  
Sarkhej-Bavla Highway, Tal: Sanand, Dist: Ahmedabad.

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 North.
4. The Asstt./Deputy Commissioner, CGST Division-IV, Ahmedabad - North.
5. Guard File.
6. P.A. File

