



# 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(30)201/North/Appeals/ 2018-19 / 10685 to 10689  
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-1-19-20  
 दिनांक (Date): 18/04/2019 जारी करने की तारीख (Date of issue): 23/05/2019  
 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 07/DC/D/2018/AKJ Dated: 21/12/2018  
 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 M/s. Saga Laboratories (Unit II)

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 प्रकिया 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 क्रेडिट 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.

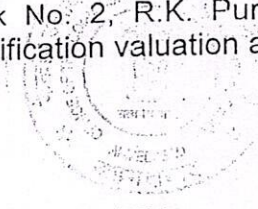
(२) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

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





- (ख) उक्तिलिखित परिच्छेद 2(1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघाणी नगर, अहमदाबाद-380016.
- (b) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para-2(1) above.
- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए.-3 में निर्धारित किए अनुसार अपीलीय न्याधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फ़ीस भेजनी होगी । जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या ५० लाख तक हो तो रुपए ५०००/ फ़ीस भेजनी होगी । जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए ५० लाख या उससे ज्यादा हो तो रुपए १००००/ फ़ीस भेजनी होगी । फ़ीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध में की जाए । यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है । स्टे के लिए आवेदन-पत्र रुपए ५००/- फ़ीस भेजनी होगी ।
- 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.5000/-, 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 crossed bank draft in favour of Asst. Registrar of 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. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-
- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिये फ़ीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिये इस तथ्य के होते हुए भी की लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय 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 not withstanding the fact that the one appeal to the Appellant 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 १९७० यथा संशोधित की अनुसूची-१ के अंतर्गत निर्धारित किये अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रुपए ६.५० पैसे का न्यायालय शुल्क टिकट लगा होना चाहिये ।
- One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear 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 सम्बंधित मामलो को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यावधि) नियम, १९८२ में निहित है ।
- (6) Attention is invited to the rules covering these and other related matter contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.





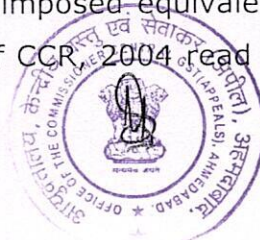
ORDER IN APPEAL

This order arises out of an appeal filed by M/s. SAGA laboratories (Unit-II), Survey No. 198/2 & 198/3, Nr. Claris, Chacharwadi, Vasna, Changodar, Tal. Sanand, Dist.- Ahmedbad-382210 (in short 'appellant') against Order-in-Original No. 07/DC/2018/AK dated 21.12.2018 (in short 'impugned order') passed by the Deputy Commissioner, CGST & Central Excise, Division, IV, Ahmedabad-North [for short-'adjudicating authority'].

2. Based on Audit Observation by Central Excise & Service Tax Audit officers, a show cause notice dated 28.05.2018, was issued to the appellant for (i) disallowing and recovery of cenvat credit amounting to Rs, 3,64,554/-which was availed irregularly during 2015-16 to 2016-17; and (ii) demand of service tax of Rs. 4,00,538/- which was not paid under reverse charge mechanism towards import of taxable service during 2015-16 to 2016-17. The said show cause notice also proposes for recovery of interest and imposition of penalty. The adjudicating authority vide impugned order dated 21.12.2018 disallowed the centvat credit and confirmed the central excise duty Rs.3,64,554/- along with interest and also imposed penalty equal to the cenvat credit wrongly availed. Further, he dropped the demand of service tax of Rs.2,02,818/- from total demand of service tax Rs. 4,00,538/- and confirmed the remaining demand of service tax of Rs. 1,97,720/- alongwith interest and imposed penalty of Rs.1,97,720/-.

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

- (i) The appellant never disputed the wrong availment of cenvat credit of Rs. 3,64,554/- and the same amount was reversed vide RG23A Pt. II Entry No. 596 dated 07.11.2017. The payment vide reversal from cenvat register was not accepted as with the introduction of GST w.e.f. 1<sup>st</sup> July 2017. Section 142(8) of CGST Act 2017 has come into effect and accordingly, all due arising out of existing law are to be recovered as arrears under CGST and hence, after 1<sup>st</sup> July 2017 the facility of paying arrears under existing law by way of cenvat is not available to assessee. This contention of the adjudicating authority is not acceptable by the appellant.
- (ii) The order for recovery of interest on the said cenvat amount under Rule 14 of CCR,2004 is not tenable, as credit was taken in the years 2015-16 and 2016-17 and cenvat credit balance is more than Rs. 3,64,554/- throughout the period as evident from the cenvat register and relevant ER-1 returns.
- (iii) The adjudicating authority has imposed equivalent penalty in terms of the provisions of Rule 15 (2) of CCR, 2004 read with Section 11AC (1)





(e) of the Central Excise Act, 1944. The adjudicating authority ignored the fact that penalty of Rs. 54, 684 @ 15% was already paid by the appellant at the time of audit vide DRC-03. In terms of the provisions of Section 11AC(d) of Central Excise Act, 1944 if penalty paid within 30 days of receipt of the show cause notice, the penalty liable to be paid will be 15% at the time of audit and therefore the matter ought to have been concluded and no show cause notice was warranted in the case.

- (iv) In respect of the demand of service tax, the adjudicating authority has concluded that the activities performed by sovereign or public authorities under provisions of law in nature of statutory obligation are not taxable services. However, being the part of the said expenses i.e. travelling expenses and accommodation expenses, the adjudicating authority has held that, these expenses are not in nature of statutory levy. Accordingly, a demand of Rs. 1,97,720/-, out of total demand of Rs. 4,00,538/-, has been confirmed. The appellant has submitted that the charges payable for the sovereign functions carried out by the Malta Government comprises of two parts viz. (i) Fixes fees and (ii) Travelling and accommodations expenses. It cannot be said that only the portion of the expenses is towards the sovereign function and the variable is towards services. Thus, the entire expenses incurred towards the said statutory requirement of the Malta Government falls under the category of sovereign function and are not liable to service tax.

4. A Personal hearing in the matter was held on 05.03.2019. Shri Archit Kotwal, Consultant, appeared on behalf of the appellant and reiterated the grounds of appeal and filed additional submission.

5. I have carefully gone through the appeal memorandum, submissions made at the time of personal hearing and evidences available on records. At the outset, I observe that the appellant had wrongly availed the Cenvat credit amounting to Rs.3,64,554/- which was undisputed by them and accordingly reversed vide RG23A Pt. II Entry No. 596 dated 07.11.2017. However, the department has not accepted the mode of payment on introduction of CGST with effect from 01.07.2017. Therefore, in this regard the issue to be decided is as to whether the duty payment of Rs. 3,64,554/- through the cenvat credit register (RG23A Pt. II) is correct or not. As regard the non-payment of Rs.1,97,720/-, the issue to be decided is as to whether expense incurred by the appellant in foreign currency for travelling expenses and accommodation expenses (part of expenses on inspection charges) is liable to pay service tax or not.





6. I take the matter one by one.

**Issue-I**

Eligibility of duty payment of Rs. 3,64,554/- through the cenvat credit register (RG23A Pt. II).

6.1 There is no dispute that the appellant had availed Cenvat credit of Rs. 3,64,554/-. The dispute is with respect to the payment by reversing through cenvat register i.e. RG23A Pt. II. The payment vide reversal from cenvat register was not accepted by the adjudicating on introduction of GST w.e.f. 1<sup>st</sup> July 2017; that Section 142(8) of CGST Act 2017 has come into effect w.e.f 1<sup>st</sup> July 2017 and accordingly, all dues arising out of existing law are to be recovered as arrears under CGST . Therefore, it is the contention of the department that after 1<sup>st</sup> July 2017 the facility of paying arrears under existing law by way of cenvat is not available to appellant.

6.2 I do not agree with the said contention of the adjudicating authority. There is no dispute that the payment has been made by the appellant. The only dispute is regarding mode of payment. The adjudicating authority argued that, the payment should be made through Electronic Credit Ledger in place of cenvat credit i.e. RG23A Pt. II, as the there is no existence of cenvat credit i.e. RG23A Pt. II on introduction of GST w.e.f. 1<sup>st</sup> July 2017.

The appellant contended that they filed Tran-1 on 25.12.2017 and cenvat credit available was carried forwarded to Electronic Credit Ledger only on 25.12.2017. They further argued that they carried forwarded the cenvat credit after deducting the disputed amount i.e. Rs. 3,64, 554/- in the Tran-1. In this regard, the appellant produced 'Electronic Credit Ledger' for the period from 01.07.2017 to 30.12.2017. The appellant has also produced the ER-1 return for the month of June-2017 as well as copy of TRAN-1 which clearly prove that they have reduced the amount of Rs. 3,64,554/- from the available balance as per the ER-1 return and such reduced balance has been carried forwarded in the TRAN-1. The appellant has contended that audit was conducted in October-2017, hence filing of TRAN-1 was no possible.

6.3 I completely agree with the contention of the appellant. I have perused the above said documents submitted by the appellant. I find that as per ER-1 return for the month June-2017, cenvat of Rs. 48,71,056/- (excluding cess) was available to appellant. The cenvat amount was carried forwarded to Electronic Credit Ledger through the filing of TRAN-1 and same was filed on 25.12.2017. Audit was conducted in the month of October-2017. As para 3.3 of the impugned order, it is revealed that the appellant had agreed with audit objection for the irregular cenvat credit of Rs. 3,64,554/- and also informed that the dual benefit has been









Electronic Credit ledger

GSTIN - 24AAGFS4833D1ZF  
 Legal Name - SAGA LABORATORIES  
 Period: From -01/07/2017 To -30/12/2017

Sr.No	Date	Reference No.	Tax period, if any	Description	Transaction Type (Debit (DR) / Credit (CR))	Credit/Debit (₹)				Balance Available (₹)			
						Integrated Tax	Central Tax	State Tax	CESS	Integrated Tax	Central Tax	State Tax	CESS
-	-	-	-	Opening Balance	-	-	-	-	-	0.00	0.00	0.00	0.00
1	22/04/2017	AA2401174781604	Jul-17	ITC accrued through inputs	Credit	504,502.00	6,75,022.00	6,75,022.00	0.00	18,62,546.00	5,04,502.00	6,75,022.00	0.00
2	20/06/2017	AA2401174525648	Aug-17	ITC accrued through inputs	Credit	1,22,270.00	8,79,129.00	8,79,129.00	0.00	30,41,036.00	17,87,182.00	15,58,151.00	0.00
3	23/05/2017	DI2409170160758	Aug-17	Other than reverse charge	Debit	0.00	2,658.00	2,658.00	0.00	5,316.00	17,87,202.00	15,55,493.00	0.00
4	18/10/2017	AA2401174797779	Sep-17	ITC accrued through inputs	Credit	5,08,140.00	13,39,012.00	13,39,012.00	0.00	32,76,204.00	23,95,427.00	28,94,525.00	0.00
5	16/10/2017	DI2410170252612	Sep-17	Other than reverse charge	Debit	23,308.00	2,23,000.00	2,23,000.00	0.00	4,66,578.00	23,62,124.00	26,71,435.00	0.00
6	20/11/2017	AA2410174313209	Oct-17	ITC accrued through inputs	Credit	8,76,418.00	11,47,675.00	11,47,675.00	0.00	31,21,926.00	31,28,492.00	35,19,114.00	0.00
7	20/11/2017	DI2411170229227	Oct-17	Other than reverse charge	Debit	10,84,830.00	6,290.00	6,559.00	0.00	10,97,554.00	21,03,056.00	38,12,755.00	0.00
8	02/12/2017	DI2412170007624	Jul-17	Refund claimed from ITC Ledger	Debit	5,04,502.00	6,75,022.00	6,75,022.00	0.00	18,62,546.00	15,99,154.00	31,23,733.00	0.00
9	20/12/2017	AA2411175311678	Nov-17	ITC accrued through inputs	Credit	5,91,039.00	13,97,877.00	13,97,877.00	0.00	33,86,793.00	31,90,193.00	45,31,610.00	0.00
10	20/12/2017	DI2412170307040	Nov-17	Other than reverse charge	Debit	1,50,361.00	0.00	0.00	0.00	1,50,361.00	20,39,832.00	45,31,610.00	0.00
11	25/12/2017	AA2411174302884	Nov-17	Transitional Central Credit VAT credit	Credit	0.00	46,28,212.00	0.00	0.00	46,28,212.00	20,39,832.00	91,62,356.00	0.00
-	-	-	-	Closing Balance	-	-	-	-	-	20,59,832.00	91,62,356.00	45,31,610.00	0.00

*Admt*  
 Authorised Representative  
 of SAGA LABORATORIES

Goods and Services Tax  
 SAGA LABORATORIES

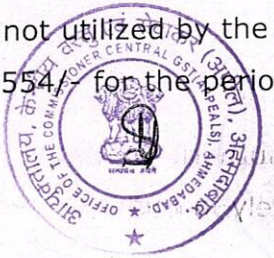
Dashboard Returns Transition Forms TRAN - 1 Credit Carried Forward

Processed Invoices

Sr.No	Registration no. under existing law	Tax period	Date of filing of the return	Balance CENVAT credit	CENVAT Credit admissible as ITC	Actions
1	AAGFS4833DXM002	062017	30/07/2017	46,28,212.00	46,28,212.00	

6.4 The appellant has no option to carry forward the available balance to Electronic Credit Ledger as the TRAN-1 was filed in the month of December 2017 only due to ongoing Central Excise and Service Tax audit. Hence on the basis of discussion above, I am of the considered view that the duty payment of Rs. 3,64,554/- through the cenvat credit register (RG23A Pt. II) made on 07.11.2017 is proper and correct.

6.6 As regards levy of interest, the appellant argued that as they have sufficient balance in cenvat credit register i.e more than Rs. 3,64,554/- and not utilized the said amount throughout the period in dispute, the question of charging of interest does not arise. As per provisions of Rule 14 of CCR, no interest is chargeable, if the credit in dispute was not utilized by the appellant. I find that the total Cenvat credit in dispute is Rs.3,64,554/- for the period of 2015-16 to 2016-17 and as per Cenvat





Credit Register, the balance of more than rupees 48 lacs shown pending as on 30.06.2017. In the circumstances, it is evident that the appellant had sufficient balance in the cenvat account and not utilized the said credit in dispute during the relevant period. Hence, no interest is leviable.

6.7 As regards imposition of penalty in this regard, I find that the adjudicating authority has imposed equal to the credit wrongly availed. Penalty is imposable on the appellant in terms of the provisions of Rule 15 (2) of CCR, 2004 read with Section 11AC (1) (e) of the Central Excise Act, 1944, as the credit in dispute was wrongly availed by the appellant. However, the appellant argued that they made the payment of Rs. 54, 684/- towards penalty under Section 11AC (d) of CEA and close the issue. Since the payment made by the appellant through Cenvat register is proper and the appellant paid 15% of the Cenvat credit wrongly availed within the time frame. Therefore, the penalty imposed on the appellant under Section 11 AC(e) of CEA is unwarranted and required to be set aside and I do so.

### **Issue-II**

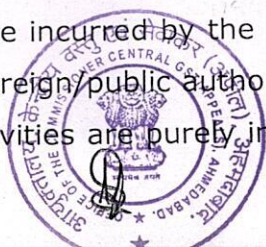
Whether expense incurred by the appellant in foreign currency for travelling expenses and accommodation expenses (part of expenses on inspection charges) is liable to pay service tax or not.

6.8 In this regard, I find that the adjudicating authority has confirmed the demand of service tax amounting to Rs.1,97,720/- by relying on Board's circular No. 192/02/2016 dated 13.04.2016 and concluded that the activities performed by sovereign or public authorities under provisions of law in nature of statutory obligation are not taxable services. Further, he concluded that travelling expenses and accommodation expenses are not in nature of statutory levy and appellants are liable to pay service tax on such expenses. However, the appellant has contended that the charges payable for the sovereign functions carries out by the Malta Government comprises of two parts viz. (i) Fixed fees and (ii) Travelling and Accommodation expenses of the designated authorities of the Malta Government; thus the entire expenses are towards the 'inspection charges' and the same cannot be vivisected for the purpose of service tax.

6.9 I have gone through the invoice No. IITC012/16 TCA 18 dated 17.08.2016 of M/s Malta Medicine Authority submitted by the appellant. There are three descriptions of expenses given in the said invoice which is as under:

- (i) per inspector per days
- (ii) travelling expenses
- (iii) accommodation expenses.

The above expenses are incurred by the appellant for the activities assigned to and performed by the sovereign/public authorities under the provision of any law are statutory duties. Such activities are purely in public interest and are undertaken





as mandatory and statutory functions. Therefore, these service are cannot be considered as services provided for consideration. This fact has been also admitted by the adjudicating authority. The argument of the appellant is that the charges payable for the sovereign functions comprises of two parts viz. (i) Fixed fees and (ii) Travelling and Accommodation expenses of the designated authorities of the Malta Government. Thus, the entire expenses are towards the statutory duties and the same cannot be vivisected for the purpose of service tax. I also agree with the argument of the appellant. As details mentioned in the invoice referred to above, I find that all the expenses were charged towards the activities assigned. Hence, expenses incurred by the appellant in foreign currency for travelling expenses and accommodation expenses (part of expenses on inspection charges) cannot be separated as it is an incidental expenses incurred and hence, are not liable to pay service tax.

7. In view of above discussion, I set aside the impugned order and allow the appeal filed by the appellant.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
8. The appeal filed by the appellant stands disposed of in above terms.


उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date: .04.2019

Attested

  
(Mohanan V.V)  
Superintendent (Appeal),  
Central Tax,  
Ahmedabad.



By RPAD.

To,

M/s. SAGA laboratories (Unit-II),  
Survey No. 198/2 & 198/3, Nr. Claris,  
Chacharwadi, Vasna, Changodar, Tal.  
Sanand, Dist.- Ahmedbad-382210

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad North.
3. The Deputy/Assistant Commissioner, Central Tax Division-IV, Ahmedabad North.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad North.
5. Guard File.
6. P.A.