



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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क फाइल संख्या : File No : V2(STC)7,10 & 11/EA-2 /North/Appeals/2018-19 / 10979 to 10983

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-EXCUS-002-APP-18 to 20-19-20

दिनांक Date : 22/05/2019 जारी करने की तारीख Date of Issue 04/06/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No 28,36 & 37/Refund/2018 Dated 16/03/2018 & 27/04/2018 Issued by **Assistant Commissioner** , Central GST , Div-IV , Ahmedabad North.

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

M/s Mylan Laboratories Limited

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:-

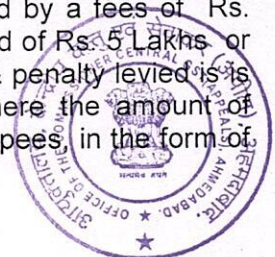
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, 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 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर 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 is 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 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 रू 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 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.



:: ORDER-IN- APPEAL ::

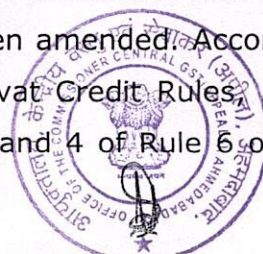
The Deputy Commissioner, CGST & Central Excise, Division-IV, Ahmedabad-North (*hereinafter referred to as 'appellant'*) has filed the present appeals against the following Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed in the matter of refund claim filed by M/s. Mylan laboratories Ltd. (formerly known as M/s. Jai Pharma Ltd.), Plot No. 20/21, Pharmez, Sarkhej-Bavla National Highway No. 8 A, Nr. Village Matoda, Tal. Sanand, Ahmedabad (*hereinafter referred to as 'respondents'*);

Sr No	OIO No.	OIO date	Amount of refund claimed (₹)	Rev. Order No.	Rev. Order date
1	28/REFUND/2018	16.03.2018	4,36,14,251	14/2018-19	20.06.2018
2	36/REFUND/2018	27.04.2018	35,39,772	18/2018-19	30.07.2018
3	37/REFUND/2018	27.04.2018	25,26,429	19/2018-19	30.07.2018

2. The facts of the cases, in brief, are that the respondents had filed refund claims, mentioned above, in terms of Notification number 12/2013-ST dated 01.07.2013 in respect of Service Tax paid on specified services for the authorized operations in SEZ. The said refund claims were partly sanctioned vide the impugned orders by the adjudicating authority after rejecting the amounts of ₹2,345/-, ₹2,83,010/- and ₹10,988/- respectively pertaining to the refund claims mentioned in serial numbers 1, 2 and 3 above.

3. The impugned orders were reviewed by the Commissioner of Service Tax, Ahmedabad and issued review orders number 14/2018-19, 18/2018-19 and 19/2018-19 dated 20.06.2018, 30.07.2018 and 30.07.2018 respectively for filing appeal under section 84(1) of the Finance Act, 1994 on the following grounds;

- (i) The respondents, being an SEZ unit, are manufacturing exempted goods and availing the benefit of exemption by way of refund of Service Tax paid by them on specified services used for authorized operations in SEZ. During the course of pre-audit verification, it was observed that they were not eligible for the credit of inputs or input services in terms of Rule 6 of Cenvat Credit Rules, 2004 as amended vide Notification number 13/2016-CE (NT) dated 01.03.2016.
- (ii) As per Notification number 13/2016-CE (NT) dated 01.03.2016, the Cenvat Credit Rules have been amended wherein, Rule 6 of Cenvat Credit Rules, 2004 has also been amended. According to the provisions of sub-rule 6 of Rule 6 of Cenvat Credit Rules, 2004 the cases where provisions of sub-rules 1, 2, 3 and 4 of Rule 6 of Cenvat Credit Rules,



2004 shall not be applicable in case the excisable goods removed without payment of duties to an unit in an SEZ. The exclusion does not cover the situation where SEZ units who manufacture exempted goods and receive dutiable goods.

4. Personal hearing in all the matters was granted on 11.10.2018. However, the respondents had requested to decide the case on merits based on their written submission dated 11.10.2018. Vide the said written submission, the respondents had stated that the adjudicating authority had passed the refund claims on the basis of Appellate authority's decision dated 11.07.2017. They further stated that the Appellate authority has categorically held that the credit of Service Tax cannot be denied to the respondents and they are eligible for the claims.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral and written submissions made by the respondents at the time of personal hearing. As the respondents have shown unwillingness to avail the opportunity of personal hearing, I proceed with the appeal for *ex-parte* decision.

6. I observe that the issue involved in the instant case has already been decided by me vide OIA number AHM-SVTAX-000-APP-043-44-17-18 dated 11.07.2017 pertaining to M/s. Jai Pharma Ltd., which is the former name of the respondents, and on the basis of the said decision, the adjudicating authority has decided the refund claims. The decision taken in the said OIA is as under;

*"7. I find that the adjudicating authority has rejected both the claims on the ground that as the appellants were engaged in the manufacture of exempted goods, they were not eligible for the claims as per Rule 6 of Cenvat Credit Rules, 2004. In this regard, I find that the appellants are based in SEZ and they are governed by the acts and rules of SEZ. In sub-rule (1) of Rule 6 of Cenvat Credit Rules, 2004 it is mentioned that "(1) The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the **manufacture of exempted goods** or for provision of exempted services, except in the circumstances mentioned in sub-rule (2)". However, sub-rule 6 of Rule 6 of Cenvat Credit Rules, 2004 clarifies below the issue in terms of exempted goods supplied to the SEZ units;*

"(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either-



- (i). cleared to a unit in a special economic zone; or to a developer of a special economic zone for their authorized operations; or
- (ii) cleared to a hundred per cent. export-oriented undertaking; or
- (iii) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or
- (iv) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No.108/95-Central Excise, dated the 28th August, 1995, number G. S R. 602 (E), dated the 28th August, 1995; or
- (v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or
- (vi) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting; or
- (vii) all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied,-
- (a) against International Competitive Bidding; or
- (b) to a power project from which power supply has been tied up through tariff based competitive bidding; or
- (c) to a power project awarded to a developer through tariff based competitive bidding”.

Thus, it is clear that sub-rule (1) of Rule 6 of Cenvat Credit Rules, 2004 will not be applicable to those supplying to the units situated in SEZ. Therefore, it can be clearly deduced that if a supplier of exempted goods, to the SEZ unit, can avail Cenvat credit, the unit situated at SEZ and exporting the finished goods can very well do so. Even in a normal situation, a regular assessee can avail Cenvat credit on inputs used in exempted products if the latter is exported outside India. In the case of *M/s. Repro India Ltd. vs. Union of India*, the Hon'ble High Court of Judicature at Bombay also had the same view. The head notes of the verdict of Hon'ble High Court of Judicature at Bombay is placed below;

"Cenvat/Modvat - Inputs used in dutiable as well as exempted final products - If exempted products are exported outside India the provisions of Rule 6(6)(v) of the Cenvat Credit Rules, 2004 applicable - Bar provided under Rule 6(1) *ibid* and liability created under Rule 6(3)(b) *ibid* not attracted - Department's direction to pay the 10% even though printed books were exported, legally not sustainable - Only if petitioners do not export the printed goods and do not maintain



the account as contemplated by Rule 6(2) ibid, the petitioner would be required to pay 10% on the sale price of printed goods not so exported.

Cenvat/Modvat – Inputs used in exempted goods – Cenvat credit available in respect of inputs used in manufacture of final products being exported irrespective of the fact that the final products are otherwise exempt – Rule 6(6)(v) of Cenvat Credit Rules, 2004. – Rule 6(6)(v) has been consciously and expressly enacted with the specific objective to ensure that duty is not levied even on inputs going to the export products”.

In view of the above, it is now very clear that the credit cannot be denied to the appellants and they are eligible for the refund claims they applied for.”

7. As per the above OIA, it is very clear that the credit cannot be denied to the respondents and they are eligible for refund claims and I observe that the adjudicating authority has correctly sanctioned the said refund claims by following the above mentioned OIA.

8. In view of the facts and discussions hereinabove, I reject the appeals filed by the Department and uphold the impugned orders.

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

9. 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. Mylan laboratories Ltd.,
Plot No. 20/21, Pharmez,
Sarkhej-Bavla National Highway No. 8 A,
Nr. Village Matoda, Tal. Sanand,
Dst. Ahmedabad-382 213.

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Ahmedabad (North).
- 3) The Dy./Asst. Commissioner, CGST, Division-IV, Ahmedabad (North).
- 4) The Asst. Commissioner (System), Central Tax, Hq., Ahmedabad (North).
- ✓ 5) Guard File.
- 6) P. A. File.



