



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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DIN-20211264SW000000ED40

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/37/2021-Appeal-O/o Commr-CGST-Appl-Ahmedabad /H505 To H509
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-39/2021-22**
दिनांक Date : **24.11.2021** जारी करने की तारीख Date of Issue : **01.12.2021**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **25/ADC/2020-21/MLM dated 26.11.2020**, passed by the Additional Commissioner, Central GST & Central Excise, Ahmedabad-North.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- The Assistant Commissioner, Central GST & C. Ex. Div-V, Ahmedabad North,
2nd Floor, Sahjanand Arcade, Helmet Cross Road, Memnagar, Ahmedabad-380052.

Respondent- M/s. Cadila Pharmaceuticals Ltd., Cadila Corporate Campus, Sarkhej Dholka Road, Bhat, Ahmedabad, Gujarat-387810.

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 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक 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।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) 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.

(क) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of 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.

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी 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 (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

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

(1) 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. का 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.

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

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

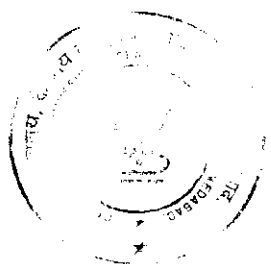
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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, provided that the pre-deposit amount shall not exceed Rs.10 Crores. 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 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

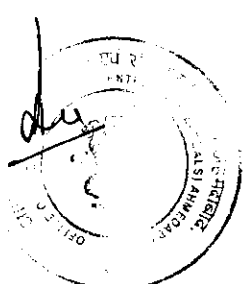
The Assistant Commissioner, CGST & Central Excise, Division-V, Commissionerate-Ahmedabad North (hereinafter referred to as the 'Department'), in pursuance of the Review Order No.51/2020-21 dated 29.01.2021 issued from F.No. GEXCOM/REV/ST/OIO/143/2021 dated 29.01.2021 by the Commissioner, CGST & Central Excise, Ahmedabad-North, has filed this appeal against the Order-in-Original No. 25/ADC/2020-21/MLM dated 26.11.2020 (hereinafter referred to as the "impugned order") passed by the Additional Commissioner, CGST & Central Excise, Commissionerate-Ahmedabad North (hereinafter referred to as the "adjudicating authority") in the matter of M/s. Cadila Pharmaceuticals Ltd., Cadila Corporate Campus, Sarkhej-Dholka Road, Village-Bhat, Dist-Ahmedabad-387810 (hereinafter referred to as the "respondent").

2. Facts of the case, in brief, are that the respondent was holding Service Tax Registration No. AAACC6251EST002 for discharging Service Tax under Reverse Charge Mechanism for various categories of services like Business Auxiliary Services, Management Consultancy Service, Works Contract Services, Legal Consultancy Service, Rent-a-Cab scheme operator service, Manpower recruitment/supply agency service and Sponsorship services etc.

2.1 Audit of the records of the respondent was carried out by the departmental audit officers for the period from April, 2014 to June, 2017. Based on the audit observations, a Show Cause Notice vide F.No. VI/1(b)/CTA/Tech-39/SCN/Cadila/2019-20 dated 04.10.2019 was issued to the said respondent for demand and recovery of the Service Tax not paid/short paid by them, on account of different points as discussed therein.

2.2 The Show Cause Notice issued from F.No. VI/1(b)/CTA/Tech-39/SCN/Cadila/2019-20 dated 04.10.2019 has been adjudicated by *the adjudicating authority* vide the impugned order, as briefly reproduced below:

- (i) The demand of Service Tax amounting to Rs. 34,48,399/- has been confirmed [as per Revenue Para-2: Non-payment of service tax on notice pay income recovered from employees] and ordered to pay the same under Section 73 (2) of the Finance Act, 1994, alongwith interest thereon at the applicable rate under the provisions of Section 75 of the Finance Act, 1994.
- (ii) The demand of Service Tax amounting to Rs. 9,71,082/- has been confirmed [as per Revenue Para-3: Short payment of service tax expenditure in foreign currency on account of reconciliation of ST-3 with Financial Accounts under the



category of Import of Service under RCM] and ordered to pay the same under Section 73 (2) of the Finance Act, 1994, alongwith interest thereon at the applicable rate under the provisions of Section 75 of the Finance Act, 1994.

- (iii) Penalty of Rs. 44,19,481/- has been imposed on the appellant under the provisions of Section 78(1) of the Finance Act, 1994.
- (iv) The demand of Service Tax amount of Rs. 96,92,030/- [demanded as per Revenue Para-1: Non/Short payment of Service Tax on expenditure in foreign currency for product registration fee and other expenses made to foreign government under the category of Import of Service under RCM] has been dropped alongwith proposal of interest and penalty in respect of the same.
- (v) Penalty of Rs. 1000/- imposed for late filing of ST-3 Returns (Revenue Para-4) under Section 70 of the Finance Act, 1994. Since the amount has been paid by the appellant, the same has been appropriated.
- (vi) The demand of Service Tax of total Rs. 39,700/- [demanded as per Revenue Para-5 & Revenue Para-6] has been confirmed. Since the amount has been paid by the appellant alongwith interest and penalty, the same has been appropriated.
- (vii) The demand of interest of Rs. 15,037/- [on late payment of Service Tax as per Revenue Para-7] has been confirmed. Since the amount has been paid by the appellant, the same has been appropriated.

3. Being aggrieved with the impugned order, the Department has preferred this appeal on the grounds as mentioned in the subsequent paragraphs, with a request to set aside the impugned order to the extent of the Service Tax demand of Rs. 96,92,030/- alongwith applicable interest and proposal for penalty in respect of the same which has been dropped:

3.1 The respondent has incurred expenditure in foreign currency during the period from April 2014 to March 2016, on payment of product registration fees and other expenses made to foreign governments. These fees have been paid by the respondent to access foreign market. In the present case, USFDA (US Food & Drug Administration) and other foreign governments has charged fees namely product registration fees, license fees and inspection fees, as consideration and in return have permitted/allowed the respondent to manufacture/produce/market/sell their products in the market of their country. Thereby, the foreign governments have provided a facility to the respondent to market their products, in lieu of

payment of registration fees. This act on the part of foreign government of allowing the respondent, access to their markets in lieu of payment of a consideration squarely falls under the category of **service** as defined under Section 65B(44) of the Finance Act, 1994.

- 3.2 Under the negative list regime of service tax effective from July 1, 2012, every activity carried out by a person for another for consideration shall be liable to service tax, unless excluded under the negative list under Section 66D of the Finance Act, 1994 or specifically exempted. The negative list, under clause (a) of Section 66D of the Finance Act, 1994 is as under:

“(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;*
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;*
- 4 transport of goods or passengers; or*
- 5 Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;”*

The term “Government” is defined under the General Clause Act, 1987 as under:

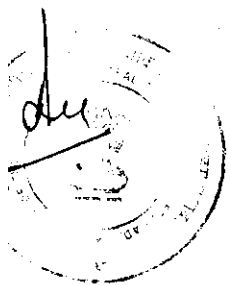
“3(23) “Government” or “the Government” shall include both the Central Government and any State Government.”

The Section 4A of the General Clause Act, 1987 specified that unless there is anything repugnant in the subject or context, the definition of the term “Government” applies to all Indian laws.

Further, the term “Government” is also defined in clause (26A) of Section 65B of the Act, inserted by the Finance Act, 2015 w.e.f 14.05.2015, as under:

“Government” means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder;”

In view of the above definition, the term ‘government’ as defined in the Act would not apply to foreign governments located in the non-taxable territory. Hence, the contention of the adjudicating



authority that the expenses made by the respondent in the nature of product registration fees, licence fees and inspection fees were paid to the Government agencies does not hold true.

- 3.3 In terms of the Rule 3 of the Place of Provision of Service Rules, 2012, "*Place of Provision generally- the place of the provision of a service will be the location of the recipient of service.*"

Further, in terms of the Notification No. 30/2012-ST dated 20.06.2012, as amended, the person receiving the service is liable to pay service tax under reverse charge mechanism, "*in respect of any taxable service provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory*".

Also, in terms of the provisions of Rule 2(1)(d) of Service Tax Rules, 1994, the person liable to pay service tax under the reverse charge mechanism has been stipulated as under:

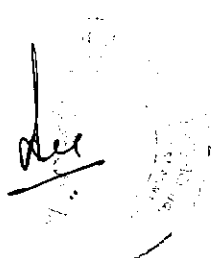
"Rule 2(1)(d): "person liable for paying service tax", -

(i) *in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-*

(G) *in relation to any taxable service other than online information and database access or retrieval services(Inserted vide Notification 48/2016-Service Tax) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory, the recipient of such service;"*

- 3.4 The adjudicating authority has relied on CESTAT's judgment in the case of Intas Pharmaceuticals Ltd Versus Commissioner of Service Tax, Ahmedabad [2009 (16) STR 748 (Tri. Ahmd)] and Paramount Communication Ltd. Versus Commissioner of Central Excise, Jaipur [2012 (25) STR 76 (Tri. Del)] which pertains to the period prior to the introduction of negative list regime. In the present case, the period covered is April 2014 to March 2016. After introduction of negative list regime, any activity carried out by a person for another for consideration including declared service is liable to service tax.

4. Personal Hearing in the case was held on 17.09.2021 through video conferencing. Shri S. J. Vyas, Advocate, appeared on behalf of the respondent. He stated that the adjudicating authority had correctly decided that the activities in question were not liable for service tax. He further stated that he would make a written submission in the case. Further, the respondent vide E-mail dated 20.09.2021 has submitted their cross objection as below:



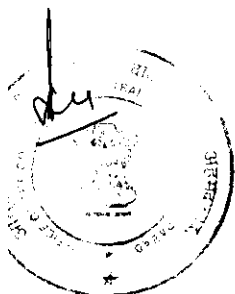
- It is settled law that it is not possible to go beyond the grounds of appeal. The impugned order has dropped the demand on the above basis at all.
- As per the para 100 to 105 of the impugned order, the basis adopted by the adjudicating authority is that there was no service at all and for this purpose, he has relied upon Board's Circular as well as decision of Hon'ble Tribunal.
- The question of negative list would arise only once the activity was service. When there is a finding that there was no service, the further inquiry would stop.
- This aspect is not challenged or denied in the appeal of the department. Therefore, the appeal will not survive and is required to be dismissed.

5. I have carefully gone through the facts of the case, grounds of appeal, the oral submissions made at the time of personal hearing and additional submission given by the respondent. It is observed that the issues to be decided in this case are as under:

- (i) Whether the impugned order dropping the Service Tax demand of Rs. 96,92,030/- in respect of payments made by the respondent to foreign governments by way of product registration fees etc. for marketing their product in that country treating it as import of service under reverse charge mechanism is legal and proper or not? The demand pertains to period F.Y. 2014-15 and F.Y. 2015-16.

6. In the present appeal, the first contention of the department is that the foreign government have provided a facility to the respondent to market their products, in lieu of payment of registration fees and this act on the part of foreign government of allowing the respondent, access to their markets in lieu of payment of a consideration squarely falls under the category of '**service**' as defined under Section 65B(44) of the Finance Act, 1994. Further, in terms of the provisions of Rule 2(1)(d) of the Service Tax Rules, 1994 read with Rule 3 of the Place of Provisions of Service Tax Rules, 2012 and as per Notification No. 30/2012-ST dated 20.06.2012, the respondent is liable to pay Service Tax in respect of the expenditure in foreign currency for product registration fee and other expenses made to foreign government, under the reverse charge mechanism. Further, I also find that the show cause notice issued to the respondent in the present case was also issued on the similar grounds.

6.1 It is observed that Section 65B(44) of the Finance Act, 1994 has been inserted by the Finance Act, 2012, w.e.f. 1.7.2012, wherein as per Sr. No. 44, the term 'Service' is defined. Further, it is also observed that all other relevant provisions relied upon by the department in support of their contention have also been introduced either upon the introduction of the



negative list regime or thereafter. In the present case, I find that demand raised against the respondent pertains to the period from F.Y. 2014-15 to F.Y. 2015-16, which is covered under the negative list regime of the Service Tax law.

6.2 On going through the impugned order, I find that the adjudicating authority has cited Service Tax Master Circular No. 96/7/2007 dated 23.08.2007 wherein it has been held that *“Activities assigned to and performed by the sovereign / public authorities under the provisions of any law are statutory duties. These are not to be treated as services provided for a consideration. Therefore, such activities assigned to and performed by a sovereign / public authority under the provisions of any law, do not constitute taxable services. Any amount / fee collected in such cases are not to be treated as consideration for the purpose of levy of service tax.”* The adjudicating authority further mentioned at para-102 of impugned order that *“I agree to the submission made by the assessee that the expenses made by them were in the nature of product registration fees, licence fees and inspection fees paid to the Government agencies.....I also find that they paid fees/charges to US FDA and other foreign governments are not for any service and would not fall under import of service and the same is not taxable.”*

6.3 However, I also find that the adjudicating authority in the impugned order has nowhere discussed or explained how the provisions of Service Tax, particularly introduced and applicable in the Negative List Regime, dealt with the transaction involving ‘expenditure in foreign currency for product registration fees and other expenses made to foreign government’ as a ‘taxable service’. Hence, I find that the impugned order has been passed by not considering the legal provisions existing during the material time. It is also the more relevant as the SCN has detailed the legal provisions of Negative List regime. Hence, the impugned order is not legally sustainable and is liable to be set aside.

6.4 Further, I have also gone through the Hon’ble CESTAT’s judgment in the case of Intas Pharmaceuticals Ltd Versus Commissioner of Service Tax, Ahmedabad [2009 (16) STR 748 (Tri. Ahmd)] and Paramount Communication Ltd. Versus Commissioner of Central Excise, Jaipur [2012 (25) STR 76 (Tri. Del)] relied upon by the adjudicating authority and find that the issue covered under the same was pertained to the period prior to the introduction of Negative List Regime.

7. In view of the above discussion, I find that the adjudicating authority has neither examined the relevant statutory provisions of Service Tax law, which have been particularly introduced in the Negative List Regime as discussed in the foregoing paras, nor delivered any findings in the impugned order as regards the applicability thereof to the facts of

the present case. Accordingly, I find it proper to remand back the matter to the adjudicating authority to examine the statutory provisions of Service Tax law applicable during the relevant period, and the applicability thereof to the facts of the present case and decide the issue afresh following the principles of natural justice.

8. Accordingly, I set aside the impugned order to the extent of demand of Service Tax amounting to Rs. 96,92,030/- alongwith applicable interest and penalty against the respondent dropped by the adjudicating authority and remand back the matter to the adjudicating authority to examine the said issue on merits as discussed in Para-7 above and decide it afresh, following the principles of natural justice.

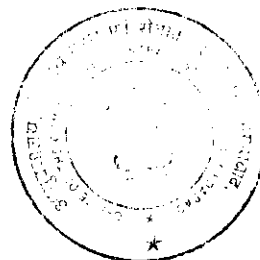
9. The appeal filed by the department stands disposed off in above terms.

Akhilesh Kumar
24th November, 2021
(Akhilesh Kumar)
Commissioner (Appeals)

Date:24th November, 2021

Attested

Sisodiya
(M.P.Sisodiya)
Superintendent (Appeals)
CGST & CE, Ahmedabad



By Regd. Post A. D

1. The Assistant Commissioner
CGST & C.Excise, Division-V,
Commissionerate-Ahmedabad North

APPELLANT

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RESPONDENT

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST, Commissionerate-Ahmedabad North.
3. The Deputy/Asstt. Commissioner, CGST, Division-V, Commissionerate-Ahmedabad North.
4. The Deputy/Asstt. Commissioner (Systems), CGST, Commissionerate-Ahmedabad North.
- ✓ 5. Guard file
6. PA File