सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का अमृत महोत्सव

By SPEED POST

DIN:- 20231264SW000055755C

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2224,2225 & 2226/2023 / ६४३५-६४३७
(ख)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-EXCUS-002-APP-153 to 155/23-24 and 21.11.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	04.12.2023
(ङ)	Arising out of Order-In-Original No. 42/AC/Refund/2022-23, 44/AC/Refund/2022-23 & 43/AC/Refund/2022-23/AM all dated 10.1.2023 passed by The The Assistant Commissioner, CGST Division-IV, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Zydus Lifescience Ltd. Plot No. 1A, 1 & 2, Pharmaceutical SEZSarkhej-Bavla NH-8A, Metoda Ahmedabad - 382213

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 पूवोक्त 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 :-

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 : -

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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 मे 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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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.

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

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 डयूटी केडिट 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।

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.

(2) 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 दिनाँक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 :-

(2) उक्तलिखित परिच्छेद 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।

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

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. Registar 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 ओदश 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 हैं।

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 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 1970 यथा संषोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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 in 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) एके प्रति अपीलो के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

(1) खंड (Section) 11D के तहत निर्धारित राशि;
(2) लिया गलत सेनवैट क्रेडिट की राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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.

(6) (i) 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. Zydus Lifesciences Ltd (formerly known as Cadila Healthcare Ltd),Plot No. 1A, 1 & 2, Pharmaceutical SEZ, Sarkhej-Bavla NH-8A, Metoda,Ahmedabad-382213 (hereinafter referred to as '*the appellant*') have filed the present appeal against following Order-in-Originals (referred in short as '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-IV, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*').

Table-A

Sr. No.	Appeal No.	Original OIO and Date	OIO No and Date	Period of Dispute	Refund Amount Involved
01	GAPPL/COM/STP/2224/2023	SD-02/Ref-164//NT/2013-14 dated 15.01.2014	42/AC/Refund/2022-2023 dated 10.01.2023 **Referred to as Impugned Order –1**	February, 2012 to June, 2012	Rs.17,41,223/-
02	GAPPL/COM/STP/2225/2023	SD-02/Ref-165//NT/2013-14 dated 16.01.2014	44/AC/Refund/2022-2023 dated 10.01.2023 **Referred to as Impugned Order –2**	August, 2012 to April, 2013	Rs.1,07,01,551/-
03	GAPPL/COM/STP/2226/2023	SD-02/Ref-163//NT/2013-14 dated 15.01.2014	43/AC/Refund/ 2022-2023 dated 10.01.2023 **Referred to as Impugned Order –3**	August, 2012 to September, 2012	Rs.7,04,185/-

2. The facts of the case, in brief, are that the appellant is engaged in the manufacture and export of "Pharmaceutical Products" falling under Chapter 30 of the Central Excise Tariff Act, 1985. They were also clearing the said goods for export. During the disputed period they procured several taxable services for development of their SEZ Unit and for commencing the production of finished goods. Thereafter, in terms of Notification No. 17/2011-ST dated 01.03.2011 and Notification No. 40/2012-ST dated 20.06.2012, the appellant filed three refund claims listed above, seeking refund of service tax paid in respect of the service tax paid on taxable services received in SEZ. On scrutiny of the said claim, department raised a query memo communicating following discrepancies;

a. The manufacturing activity was not started by the appellant and therefore, refund is not permitted under Notification No. 17/2011-ST dated 01.03.2011;
b. The Appellant had similar unit in DTA and it was not conclusively proved that the said services were utilized only for SEZ operations;
c. The declaration in terms of Para 3 (f) of Notification was not submitted stating that services were actually used for authorized operation in SEZ unit;
d. The Approval List of taxable services submitted by the appellant was issued by KASEZ under erstwhile Notification No.09/2009-ST dated 03.03.2009 which cannot be considered as valid document required under Notification No. 17/2011-ST dated 01.03.2011;
e. The appellant had DTA operations also, and therefore, the services falling under explanation (iii) to para 2(a) of Notification No. 17/2011-ST cannot be considered as 'wholly consumed' and entitled for refund.

f. The Appellant had obtained registration on 13.07.2012 however the refund claim was filed for period prior to 13.7.2012, hence cannot be considered.

2.1 The Appellant vide letter dated 14.6.2013 submitted their response, stating that:

a. Several activities are required prior to commencing production in SEZ Unit such as purchase of plots, installation of machineries etc so that the Unit can be made functional and Notification No. 17/2011-ST dated 01.03.2011 nowhere restricts the refund claim of service tax paid on any taxable services received by SEZ during its building stage;

b. Para-7 of Circular No. 142/11/2011-ST dated 18.05.2011, clarifies that on services which are utilized for authorized operations, exemption can be availed through refund;

c. Research and development activities had started prior to manufacturing activities for which Letter of Approval was issued by Joint Development Commissioner, Kandla SEZ on 25.04.2012. The said services were clearly in the ambit of authorized operations;

d. The Appellant had availed services of product development and the invoices were raised under category of 'scientific and technical consultancy service' from M/s Xylopia and Clintha Research Ltd. These services were used for authorized operations in SEZ unit, thus, irrespective, whether manufacturing operations were commenced or not, they would be eligible for refund of service tax paid by them;

e. In the present case, there has been no sharing of services by SEZ and DTA Unit and thus, provisions under Para 2(d) of Notification shall not be applicable. Further, there was no export turnover as services were used exclusively for authorized operations in SEZ, thus, refund was admissible.

f. The intention of Legislature was to grant refund of service tax paid on services availed by SEZ Unit for its authorized operations, which is further clarified vide Board Circular dated 18.05.2011; and

g. The Refund Claim is as per procedure prescribed in Notification as they had applied for service tax registration before filing of refund claim, which can be considered as fulfilment of conditions specified in Notification,

2.2 The refund claims filed by the appellant were originally rejected by the Adjudicating Authority vide impugned Order-in-Originals listed at column-3 of Table-A above, on the grounds that;

- The Appellant had not obtained list of taxable services duly approved by Approval Committee, thus, the condition of the Notification has not been fulfilled;
- Appellant had accepted that they have a DTA Unit and thus, the services were not wholly consumed within SEZ Unit and were in fact shared by both the Units. There was nothing on record to show that the services were not shared with DTA Unit;

- Proper accounts of receipt of specified services has not been maintained by the appellant, hence, there is no evidence to support that books of accounts of SEZ and DTA have been maintained separately;
- Manufacturing activities were not commenced till the date of filing refund claim, and research and development activities cannot be treated as manufacturing operations;
- Refund claims have been filed under the category of Business Auxiliary Services, Technical Testing and Technical Consultancy, and hence, these services are not directly connected with the authorized operations.

2.3 Aggrieved by afore listed OIOs, the Appellant preferred appeals and Commissioner (Appeal) vide Order-in-Appeal No. AHM-SCTAX-000-APP-165 & 166 -14-15 dated 27.11.2014 & Order-in-Appeal No. AHM-SCTAX-000-APP-167-14-15 dated 01.12.2014, rejected the appeals filed by the appellant and upheld the Order-in-Original on following observations:

a) Substantial benefit of Refund Claim cannot be denied for non-following of procedural requirements and mere change in Notification cannot be aground for rejecting the claim;
b) Input services used in connection with the initial setting up would be considered as used in connection with authorized operation, as held by Hon'ble Tribunal in the case of Zydus Tech. Ltd. Vide Order No. A/1570/WZB/AHD/2012 dated 03.09.2012;
c) On the point of Refund claims being filed under the category of Business Auxiliary Services, Technical Testing and Technical Consultancy, the Appellate Authority observed that for pharmaceutical products, such input services are a necessary ingredient, thus, refund cannot be rejected on this ground;
d) Regarding the fact of service not wholly consumed within SEZ, the Appellate Authority upheld the observation of Ld. Adjudicating Authority that the Appellants had failed to prove the fact regarding receipt and use of services in the books of account of SEZ Unit as there is no evidence to ascertain whether the services were exclusively used/consumed and received in SEZ Unit or whether they were shared with DTA Unit.

2.4 Aggrieved by the above Order-in-Appeal, the Appellant preferred an appeal before Hon'ble CESTAT, Ahmedabad and Tribunal vide Final Order No. A/11182-11184/2022 dated 04.08.2022 remanded the matters to the Adjudicating Authority for the purpose of verifying all the documents and there after passing a fresh order. The matter was therefore remanded with the sole purpose to examine whether the services for which refund was filed were exclusively used in their SEZ unit and no part of the service was shared with DTA unit and also the invoices of the service provider were issued to the SEZ unit.

3. The Adjudicating Authority vide impugned orders (listed at column-4 of the Table-A above) observed that the appellant had submitted all the invoices in the name of SEZ Unit and submitted A-2 Form, thus, complying with Para 2 (d) of Notification. He, however, rejected the refund claim solely on the ground that the Appellant had failed to produce any evidence to prove the receipt and use of services in the authorized operation of SEZ unit; that the services were exclusively used by the SEZ Unit and were

accounted for in the books of account of SEZ Unit, in terms of Notification No. 17/2011-ST dated 01.03.2011 and Sr. No. 2 (iii) of Circular No. 142/11/2011-ST dated 18.05.2011. He placed reliance on decisions passed in the case of M/s Krishi Upaj Samiti- 2022 (58) GSTL 129(S.C.); Dilip Kumar &Co.-2018 (361) ELT577(S.C.) and Areva T & D India Ltd. - 2019(28) GSTL 570 (Mad.).

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant preferred the present appeal on the grounds elaborated below:-

- The Adjudicating Authority in the Impugned Order has failed to appreciate that the that the Appellant had produced all the invoices in the name of SEZ Unit and submitted A-2 Form, thus, complying with Para 2 (d) of Notification. They also in their written submissions, stated that the services were exclusively used by the SEZ Unit, in support of which they had also submitted the CA Certificate dated 01.01.2013, which have not been considered by the Adjudicating Authority. No independent reasons are accorded in the Impugned Order for rejecting the Refund Claim. They placed reliance on following case laws:-
  - Cyril Lasardo (Dead) V/s Juliana Maria Lasarado 2004 (7) SCC 431
  - Shukla & Brothers - 2010 (254) ELT 6 (SC)=2011 (22) STR 105 (SC)
  - Bidhannagar (Salt Lake) Welfare Association -2007 (6) SCC 668

- The Impugned Order proceeds on an erroneous premise that the present refund claim falls under Para 2 (d) of Notification No. 17/2011-ST dated 01.03.2011, whereas, the said Para is applicable in cases where the services are not wholly consumed within SEZ Unit. In the present case, it is an undisputed fact that the services are used exclusively in the SEZ Unit and have not been shared with the DTA Unit. Thus, the present Refund Claim shall not fall under Para 2 (d) of Notification No.17/2011-ST dated 01.03.2011. The Appellant had submitted that the services received by the SEZ Unit were never shared with the DTA Unit. All the services were exclusively consumed by the SEZ Unit. Further, there was no export turnover as services were used exclusively for authorized operations in SEZ, thus, refund claim ought to have been allowed. The Notification No. 17/2011-ST dated 01.03.2011 provides exemption to taxable services received by the Unit of Developerof SEZ. Further, vide Circular dated 18.05.2011 it was clarified that services which fall outside the definition of 'wholly consumed' services can be categorized as those which are used exclusively by the SEZ Unit/Developer for the authorized operationsin SEZ.

- The Notification No.17/2011-ST dated 01.03.2011 does not impose any condition for claiming refund of service tax paid on taxable services used by the SEZ Unit. However, the Circular dated 18.05.2011 has gone beyond the Notification and has imposed additional conditions, particularly the condition stating that the receipt and use of such services in the authorized operations should be accounted for in the books of accounts of SEZ Unit/Developer. It is a settled law that a Circular cannot over-ride the Notification and any condition which is not prescribed in the Notification cannot be added by virtue of issuance of Circular by imposing certain procedural requirements as Circulars are administrative in nature and is issued in exercise of executive powers. They relied upon the judgment in the case of Jindal

Stainless Ltd. Vs. Union of India, 2017 (051) STR 0130 (Del.); Intercontinental India vs. Union of India, 2003 (154) ELT 0037 (Guj), affirmed by the Hon'ble Supreme Court in 2008 (226) ELT 16 (SC) wherein it was observed that where the Notification does not provide for any condition, such a condition cannot be imposed by subsequent circular as it amounts to re-writing the Notification.

- The Appellants had submitted copies of the Invoices along with illustrative entries in the Books of Accounts of the Appellants in the SEZ Unit substantiating that the services were exclusively used by the SEZ Unit for its authorized operations. All the invoices were submitted before Adjudicating Authority and illustrative copies of accounting entries made by them were produced before Adjudicating Authority. However, the Impugned Order has failed to even take note of the same, leave alone giving any finding in that regard. The Impugned Order therefore deserves to be quashed and set aside.

5. Personal hearing in the matter was held on 31.08.2023. Shri Vaibhav Vahia, Sr, Manager and Shri Amit Parmar, Manager in the appellant company appeared on behalf of the appellant. They reiterated the submissions made in the appeal memorandum and handed over the additional written submissions. They submitted that the issue pertains to the services which were exclusively consumed by SEZ. Further, there was no export turnover as services were used exclusively in authorized operations in SEZ. Thus, refund ought to have been allowed. As per direction of the Hon'ble Tribunal the order was remanded back to the adjudicating authority. He further submitted that the matter for the subsequent period was decided by the adjudicating authority in their favour. They submitted a copy of such order and requested to set-aside the impugned order and sanction the refund.

5.1 Subsequently, due to change in the appellate authority, another personal hearing was held with the appellant on 21.11.2023. Shri Rashmikant Shah, General Manager, Shri Vaibhav Vahia, Senior Manager and Shri Amit Parmar, Manager appeared on behalf of the appellant. They reiterated the contents of the oral and written submissions made earlier and requested to allow their appeal.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum, additional submissions as well as the submissions made at the time of personal hearing. The issue to be decided in the present case is as to whether the service tax refund of Rs.17,41,223/-, Rs.1,07,01,551/- & Rs.7,04,185/- rejected in the impugned order, in the facts and circumstances of the case, is legal and proper or otherwise?

The refund pertains to the period February, 2012 to April, 2013.

6.1 On going through the facts of the case, it is observed that the refund was rejected on following grounds:-

a) The appellant has a DTA unit and the specified services were not wholly consumed within SEZ unit but were shared between SEZ and DTA units. Thus, the condition 2(a) of Notification No. 17/2011-ST dated 01.03.2011 was not fulfilled;

b) The appellant failed to prove the receipt and use of specified services in the books of account of their SEZ unit.

6.2 It is observed that the appellant had submitted invoices raised in the name of the SEZ and Form A-2 as prescribed in Para-3(b) of the notification. Copy of Chartered Accountant Certificate dated 13.06.2013 declaring that the specified services as approved by Committee of SEZ on which exemption/refund is claimed are actually used for the authorized operations in the SEZ.

6.3 To examine the issue relevant text of Notification No. 17/2011-ST dated 01.03.2011 is re-produced below;

Exemption to taxable services received by unit or developer of Special Economic Zone — Notification No. 9/2009-S.T., superseded

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act) read with sub-section 3 of section 95 of Finance (No. 2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance Act, 2007 (22 of 2007) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 9/2009-Service Tax, dated the 3rd March, 2009, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. 146(E), dated the 3rd March, 2009, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services specified in clause (105) of section 65 of the Finance Act, chargeable to tax under section 66 or section 66A of the Finance Act, received by a Unit located in a Special Economic Zone (hereinafter referred to as SEZ) or Developer of SEZ for the authorised operations, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

2. The exemption contained in this notification shall be subject to the following conditions, namely :–

(a) the exemption shall be provided by way of refund of service tax paid on the specified services received for the authorised operations in a SEZ :

Provided that where the specified services received and used for authorised operations are wholly consumed within the SEZ, the provider of such services or the receiver of such services on reverse charge basis, as the case may be, has the option not to pay the service tax ab initio instead of the Unit or Developer claiming exemption by way of refund in terms of this notification.

Explanation.- For the purposes of this notification, the expression "wholly consumed" refer to following taxable services, received by a Developer or Unit of a SEZ, for the authorised operations, namely :–

(i) services listed in clause (i) of sub-rule (1) of rule 3 of the Export of Services Rules, 2005 in relation to an immovable property situated within the SEZ; or

(ii) services listed in clause (ii) of sub-rule (1) of rule 3 of the Export of Services Rules, 2005, as are wholly performed within the SEZ; or

(iii)services other than those falling under (i) and (ii) above, provided to a Developer or Unit of SEZ, who does not own or carry on any business other than the operations in the SEZ;

(b) for the purpose of claiming exemption, the Developer or Unit of SEZ shall obtain a list of taxable services as are required for the authorised operations approved by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ;

(c) the Developer or Unit of SEZ who does not own or carry out any business other than SEZ operations, shall furnish a declaration to that effect in Form A-1, verified by the Specified Officer of the SEZ, in addition to obtaining list under condition (b) above, for the purpose of claiming exemption;

(d) where the specified services received by Unit or Developer, are not wholly consumed within SEZ, i.e., shared between authorised operations in SEZ Unit and Domestic Tariff Area (DTA) Unit, refund shall be restricted to the extent of the ratio of export turnover to the total turnover for the given period to which the claim relates, i.e.,

Maximum refund =	*service tax paid on specified services used for SEZ Authorised Operations shared with DTA Unit for the period*	*X*	*Export turnover of SEZ Unit for the period*
	Total turnover for the period		

Explanation.- For the purposes of condition (d), –

(1) "total turnover" means the sum total of the value of, –

(i) all output services and exempted services provided, including the value of services exported;

(ii) all excisable and non-excisable goods cleared, including the value of the goods exported;

(iii)bought out goods sold,

during the period to which the invoices pertain and the exporter claims the facility of refund under this notification.

(2) "turnover of SEZ Unit" shall mean the sum total of the value of final products and output services exported during the period of which the invoices pertain and the exporter claims the facility of refund under this notification;

(e) any Developer or Unit of SEZ claiming the exemption shall declare that the specified services on which exemption and/or refund is claimed to have been actually used for the authorised operations;

(f) the Developer or unit of SEZ claiming the exemption, by way of refund has actually paid the amount indicated in the invoice, bill or as the case may be, challan, including the service tax payable, to the person liable to pay the said tax or the amount of service tax payable under reverse charge, as the case may be, under the provisions of the Finance Act;

(g) no CENVAT credit of service tax paid on the specified services used for the authorised operations in a SEZ has been taken under the CENVAT Credit Rules, 2004;

(h) exemption or refund of service tax paid on the specified services other than 'wholly consumed' services used for the authorised operations in a SEZ shall not be claimed except under this notification;

(i) the developer or unit of a SEZ, who intends to avail exemption and or refund under this notification, shall maintain proper account of receipt and use of the specified services on which exemption is claimed, for authorised operations in the SEZ.

6.4 From the facts of the case, it is observed that the refund in the impugned order was rejected basically on two grounds;

(i) that the appellant has not wholly consumed the specified services within SEZ unit but have shared these services with their DTA unit also and

(ii) that the appellant failed to prove the receipt and use of specified services in the books of account of their SEZ unit.

6.5 In terms of above notification, the exemption by way of refund of service tax paid on the specified services is provided if these services are received for the authorised operations in a SEZ and used for authorised operations are wholly consumed within the SEZ. Where the specified services received by Unit or Developer, are not wholly consumed within SEZ, i.e., shared between authorised operations in SEZ Unit and Domestic Tariff Area (DTA) Unit, refund shall be restricted to the extent of the ratio of export turnover to the total turnover for the given period to which the claim relates. In the instant case, the appellant has sought refund of specified services claiming that they have received and wholly consumed these specified services for the authorised operations in their SEZ unit. It is observed that CBEC vide Circular No. 142/11/2011-ST dated 18.05.2011 at **point no.2** has clarified that

"All taxable services (under section 66 or section 66A) received by a SEZ Unit/Developer for the authorised operations, have been exempted in the first paragraph of notification 17/2011-S.T., subject to conditions. In Paragraph 2, conditions attached to this exemption are prescribed.

In terms of paragraph 2(a), refund route is the default option for all who intend to claim the exemption granted by the notification in its first paragraph. However, an exception is provided in the form of ab initio (upfront) exemption, to the 'wholly consumed' services. Services which fall outside the definition of 'wholly consumed' services can be categorized as those which are used exclusively by the SEZ Unit/Developer, for the authorised operations in SEZ or shared with DTA operations.

Para 2(d) of the notification is applicable to refund arising from 'shared services' only. Thus exemption to services exclusively used for the authorised operations of SEZ Unit/Developer, will continue to be available by way of refund, as specified in paragraph 2(a) itself, subject to other conditions. To claim this refund, Table-A, provided in Form A-2 may be used.

It is clarified that only such services shall be considered as exclusively used by SEZ Unit/Developer, for the authorised operations, as they satisfy the following criteria :

i) Invoice is raised in the name of the SEZ Unit/Developer or in the invoice, it is mentioned that the taxable services are supplied to the SEZ Unit/Developer for the authorised operations;

ii) Such services are approved by the 'Unit Approval Committee (UAC)', as required for the authorised operations;

iii) Receipt and use of such services in the authorised operations are accounted for in the books of accounts of the SEZ Unit/ Developer."

6.6 At para-5.4 of the impugned order, it is mentioned that the appellant has produced the invoices raised in the name of SEZ unit which has been in compliance to the clarification issued by Board vide Circular No, 142/11/2011-ST. So, I find that the criteria prescribed at (i) above is fulfilled.

6.7 In respect of the criteria (ii), the appellant had submitted the approved list issued by Development Commissioner, KASEZ, issued under erstwhile Notification No.09/2009-ST dated 19.06.2010. The then appellate authority on the above criteria gave a finding that since the basic condition for service tax refund under both the notification remained same refund cannot be rejected on such ground. Further, the appellate authority also observed that the appellant has submitted the list of approved services by the Development Commissioner, KASEZ, issued under letter No. KASEZ/DCO/Pharmez/II/02/2009-10/38 dated 19.06.2010, which are input services for the pharmaceutical products. As the appellant also produced a Chartered Accountant Certificate dated 13.06.2013, I find that criteria no. (ii) above, has also been fulfilled.

6.8 Now, coming to the criteria (iii), regarding the receipt & use of specified services in authorised operations and their accounting in the books of accounts of the SEZ Unit/ Developer, it is observed by the adjudicating authority that the appellant has not provided any documentary evidences to support that they have maintained separate books of account for SEZ and DTA unit. The appellant however claim that they have submitted illustrative copies of accounting entries made by them before the Adjudicating Authority. I find that the appellant has produced the copies of invoices and illustrative copies of accounting entries made by them and the C.A. Certificate dated 14.10.2014 wherein it is certified that the services pertaining to which the refund claim are filed were exclusively availed in authorized operation by their SEZ unit only. Since this certificate was issued after verification of books of accounts of the appellant, I find that these evidences are sufficient to prove that the receipt and use of specified services were in authorized operation and are accounted in the books of account of SEZ unit/ Developer.

6.9 In view of the above, I find that the appellant is eligible for the exemption by way of refund as the conditions prescribed in the notification has been fulfilled.

7. In view of the above discussion and findings, I set-aside the impugned orders rejecting the refund claims filed by the appellant and allow the appeals filed by the appellant.

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

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

28.11.23

(ज्ञानचंद जैन)
आयुक्त (अपील्स)

F.No. GAPPL/COM/STP/2224,2225 & 2226/2023

Date: 11.2023

Attested

(रेखा नायर)
अधीक्षक(अपील्स)
सी. जी. एस. टी, अहमदाबाद

By RPAD/SPEED POST

To,

M/s. Zydus Lifesciences Ltd - **Appellant**
(formerly known as Cadila Healthcare Ltd),
Plot No. 1A, 1 & 2, Pharmaceutical SEZ,
Sarkhej-Bavla NH-8A, Metoda,
Ahmedabad-382213

The Assistant Commissioner, - **Respondent**
CGST, Division-IV,
Ahmedabad North
Ahmedabad

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North. (For uploading the OIA)
4. Guard File.