
	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,	7 th Floor, Central Excise Building,	
केन्द्रीय कर शुल्क भवन	Near Polytechnic,	
सातवीं मजिल, पॉलिटेक्निक के पास,	Ambavadi, Ahmedabad-380015	
आम्बावाडी, अहमदाबाद-380015		
: 079-26305065		टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)0214,215&251/A-II/2016-17 / 3032 के 3032

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-0110 to 112-17-18

दिनांक Date : 27-09-2017 जारी करने की तारीख Date of Issue 1-11-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No AHM-SVTAX-000-ADC-022-16-17 Dated 11.11.2016 & SD-02/32/AC/16-17 Dated 29.12.2016 Issued by ADC STC, Service Tax, Ahmedabad

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

M/s. Sushen Medicarments Pvt Ltd & Deepak Madhukar
Ahmedabad

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, मेधाणी 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 और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और 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 of 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 A219k 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 रु 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 (सीस्तेत) 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 हैं -

- (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

Following three appeals have been filed before me-

Appeal No. & Appeal dt.	Against OIO	Filed By	Confirmed amt. of OIO
214/16-17 Dt. 27.12.16 [BAS, BSS, Banking Service]	AHM-SVTAX- 000-ADC-22- 2016-17 11.11.2016 by Addl. Com	Sushen Medicamentos Pvt. Ltd, Atish Annexie, Off C. G. Road, Gulbai Tekra, , Ahmedabad-380 006	49,43,637/- for period 01.04.2009 to 31.03.2014
215/16-17 Dt. 27.12.16	As above	Shri Deepak Madhukar Kulabkar, Director of Sushen Medicamentos P. L.	1,00,000/- PP imposed u/s 78A
251/16-17 Dt. 15.02.17 -Banking Ser.	SD-02/32/ AC/2016-17 26.12.16 by AC, div-II	Sushen Medicamentos Pvt. Ltd, Atish Annexie, Off C. G. Road, Gulbai Tekra, , Ahmedabad	6,548/- for period 2014-15

Order-in-Original number AHM-SVTAX-000-ADC-22-2016-17 dated 11.11.2016 (*hereinafter referred to as 'impugned order'*) passed by the Additional Commissioner, Service Tax, HQ, Ambawadi, Ahmedabad-380015 (*hereinafter referred to as 'adjudicating authority'*) where as OIO SD-02/32/ AC/2016-17 dt. 26.12.16 by AC, div-II, Service Tax, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*)

Two APPEAL No. 214/16-17 and 215/16-17 Dtd. 11.11.16 - OIO dated 11.11.2016 passed by ADC.

2.1 M/s. Sushen Medicamentos Pvt. Ltd, 105, Ashish Annexie, Off C. G. Road, Gulbai Tekra, , Ahmedabad- 380 006 (*hereinafter referred to as 'appellants'*) [AAFC S288L SD001 taken on dt. 13.04.2012] had not paid following total Service Tax of Rs. 49,43,637/- for period 01.04.2009 to 31.03.2014, as a recipient of Service received from abroad as per section 66A of FA, 1994.

- Service Tax of Rs. 48,23,320/- on BAS [Section 65(105)(zzb)- Commission paid to foreign agent],
- Service Tax of Rs. 1,16,151/- on Banking Service [Section 65(105)(zm)]and
- Service Tax of Rs. 4,166/- on Business support service (BSS) [Section 65(105)(zzzq)]

2.2 Vide impugned OIO dated 11.11.2016, Service tax of Rs. 49,43,637/- , was confirmed with applicable interest. Penalty of Rs. 49,43,637/- u/s 78



has been imposed for suppression of facts. Penalty of Rs. 10,000/- u/s 77 on for not taking registration and penalty of Rs. 10,000/- u/s 77 for not furnishing information in ST-3 was also imposed. Personal Penalty of Rs. 1,00,000/- u/s 78A on Shri Deepak Madhukar Kulabkar , Director was also imposed.

One APPEAL 251/16-17 Dtd. 15.02.17 - OIO dated 26.12.2016 passed by AC.

2.3 Vide impugned OIO dated 26.12.2016 covering period 2014-15, Service tax of Rs. 6,548/- on banking [Section 65(105)(zm)], was confirmed with applicable interest. Penalty of Rs. 6,548/- u/s 78, Penalty of Rs. 655/- u/s 76 of FA, 1944 read with section 78B. Penalty of Rs. 10,000/- u/s 77(2) for not failure to self assess the correct liability and failure to furnish information in ST-3 was also imposed.

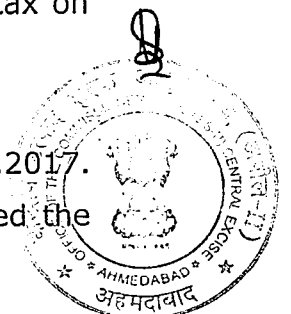
3.1 Being aggrieved with the impugned OIO dated 11.11.2016, appellant assessee and Director have filed present two appeal dated 27.12.2016 wherein it is argued that-

- a. ab initio exemption to commission (BAS) paid to overseas agent is available vide Service Tax Noti. No.18/2009-ST dated 07.07.2009 and Noti. No. 42/2012-ST dated 29.06.2012.
- b. Indian Bank is receiving service of foreign Bank therefore appellant is not service receiver, therefore appellant is not liable to pay service tax on bank commission paid to foreign bank,
- c. Appellant is not liable to pay tax on BSS.

3.2 Shri Deepak Madhukar Kulabkar , Director has also been appeal filed before me on 27.12.2016 , inrespect of PP imposed u/s 78A vide OIO dt. 11.11.2016, where I it is contended that penalty u/s 78A can be imposed only if the director was knowingly concern with the contravention and in absence of guilty mood on part of director, personal penalty can not be imposed

3.3 Being aggrieved with the impugned OIO dated 26.12.2016, appellant assessee have filed present appeal dated 15.02.2016 wherein it is argued that Indian Bank is receiving service of foreign Bank therefore appellant is not service receiver, therefore appellant is not liable to pay service tax on bank commission paid to foreign bank

4. Personal hearing in the all three cases was granted on 07.09.2017. Shri Anil Gidwani, Tax Consultant appeared before me and reiterated the



grounds of appeal. Consultant further argued that the EXP-3 & EXP-4 were filed late and all other conditions of notifications are fulfilled; that Bank Commission is between Banks and that he cited Board Circular; that Penalty can not be imposed and that limitation period can not be invoked; No PP can be imposed u/s 78A on director as he has no guilt mind to evade the duty.

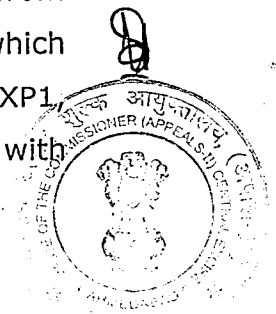
DISCUSSION AND FINDINGS

5. Above stated three appeals are decided by this common order. I have carefully gone through the facts of the three cases on records, grounds of appeal in the Appeal Memorandum and oral submissions made by and judgments produced by the appellants at the time of personal hearing.

6. Appeal No. 214/16-17 -Dt. 27.12.16 - SERVICE TAX ON COMMISSION PAID TO FOREIGN AGENTS- BAS ISSUE- OIO dated- 11.11.16

6.1 It is nowhere concluded in impugned the OIO that services of commission agents located at overseas countries have not been utilized for export of goods by them. Further nowhere it is held that appellant is not eligible for ab initio exemption from payment of service tax on commission paid to foreign agent. It is concluded by adjudicating authority that, on merit appellant is eligible for ab-initio exemption vide above stated two notification but benefits has been denied because EXP-1/EXP-2 returns prescribed under 18/2009-ST for period 2009-10 to 2011-12 and EXP-3/EXP-4 return prescribed under notification 42/2012-ST for period 2012-13 and 2013-14 has not been filed. Moreover, to reject benefits, it is also held that appellant has not produced actual documents like SB to establish that commission has been paid less than prescribed limit under said notifications. I find that appellants have belatedly submitted copies of SB, year wise worksheet containing details of commission paid, invoice No., FOB value and %age of commission paid and have also filed above EXP returns before adjudicating authority but benefits of notification is not granted as said documents/returns were not filed within prescribed time.

6.2 Appellant had not filed form EXP-1/EXP-2 prescribed u/n 18/2009-ST for period up to 28.06.2012 and EXP-3/EXP-4 from 29.06.2012 returns, which was one of the procedural condition for claiming exemption from payment of service tax. In this regards there is no dispute. Basis on which the demand was being fastened on the appellant was not filing the EXP1, EXP2, EXP3 and EXP4 returns, which were later filled by the appellant with



the department and as such substantial benefits granted by the Government of India can not be denied to the appellant only due to procedural lapse. I find that appellant is eligible for benefits of said two notifications as foreign agent service is utilized in exportation of goods. Basic requirement of notification not disputed by Revenue, therefore substantive benefit ought not to be denied on technical lapses. My above view is supported by Judgment in case of Radiant Textiles Ltd. [2017 (47) STR 195 (Tri. Chan.) in case of Notification No. 18/2009-ST. Para 9 of said judgment is reproduced as below-

"9. The facts of the case are not disputed that the appellant is receiving service of overseas commission agent and paying commission to the said agent. The benefit of notification has been denied due to reason that the appellant has not produce BRC and have not filed original copy of invoices and the return form the EXP-1 and EXP-2. In fact, the basic of requirement of notification has not been disputed by the Revenue, therefore, substantive benefit cannot be denied on account of technical lapses has held by the Hon'ble High Court of Bombay in the case of Union of India v. Farheen Texturisers (supra). Further by the Hon'ble High Court of Allahabad in the case of J.S. Gupta & Sons (supra) the payment made to the overseas commission agent not in disputed. The appellant has filed all the shipping bills and copy of invoices issued by the overseas agent. These fact has not been disputed by the Revenue. In that circumstance, I hold that the appellant has complied with the condition of the notification. Further, I observed that the Commissioner paid to the overseas commission agent is less than 1% of the FOB value of the exported goods. Therefore, the appellant is entitled for benefit under Notification No. 18/2009-S.T. Consequently, no Service Tax can be demanded under the category of 'Business Auxiliary Services' under reverse charge mechanism."

Further failure to notify Asst./Deputy Commissioner by filing EXP-1/EXP-3 and non submission of return in EXP-2/EXP-4 as required under Notification 18/2009-ST and 42/2012-ST respectively is only procedural lapse which is condonable. Refund under said notification is not deniable on merely technical interpretation of procedure as it would result in undue restricting scope of beneficial provisions under export oriented scheme. My view is

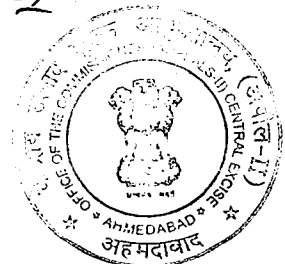


further supported by judgment in case of Coromandal Stamping & Stones Ltd [2016 (43) STR 221 (Tri. Hyd.)]. Para 5 of said judgment is reproduced as below-

"5. It is submitted by the learned Consultant appearing for the appellant, that all the conditions, except the condition that the appellant has to intimate the concerned Asst./Dy. Commissioner by filing Form-EXP-1 was not complied. So also, appellant failed to submit the return in Form EXP-2 as stipulated in sub-clause (c) of the conditions stated in the Notification. Needless to say that exemption/refund/rebate etc. are export oriented schemes. If the fact of export has been established, refund is not to be denied on merely technical interpretation of procedures. In Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.) the Hon'ble Apex Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided, so that it may not take a way with one hand, what the policy gives with the other. The Hon'ble Apex Court in Mangalore Chemicals and Fertilisers Ltd. v. Dy. Commissioner, 1991 (55) E.L.T. 437 (S.C.) while drawing a distinction between procedural condition of a technical nature and substantive condition, held that procedural conditions of technical nature can be condoned. The procedures prescribed in the notification are to facilitate verification of the claims. Since there is no dispute with regard to the export made or the service tax paid, the non-fulfilment of the conditions in my view is condonable. Following the judgments laid in the above cases, I am of the view that the non-fulfilment of the conditions is only a procedural lapse and can be condoned. In view thereof, I hold that the appellants are eligible for refund."

I find that at para 8.2.4 of impugned OIO it is observed by adjudicating authority that-

".....the benefit and submitted the form EXP-1 and EXP-2 returns for period 2009-10 to 2011-12 and EXP-3 and EXP-4 returns for the period 2012-13 along with the reply. The said form filed now does not entitle the said assessee as eligible for exemption notification as these forms i.e. EXP-1/EXP-3 and EXP-2/EXP-3 as the case may be during



relevant period were required to be filed before availing exemption notification before the jurisdictional authorities specified in the said notification for which they have failed to do so during the period involved in this show cause notice."

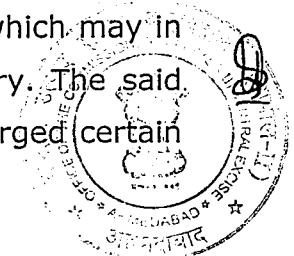
6.3 I am of considered view that mere non filing of information, non-filing of returns, not declaring exempted service vale and non-submitting required documents are rectifiable mistake and condonable lapse. Substantial benefits can not be denied for such technical and procedural lapse if otherwise benefit is available to appellant assessee. Adjudicating authority has never disputed the receipt and usages of Commission agent services (BAS) in export of goods, therefore substantial benefit can not be denied. My view is supported by following judgments-

- I. Wipro Limited Vs. Union of India [2013] 32 Taxmann.com 113 (Delhi High Court)
- II. Kothari Infotech Ltd V/S Commissioner of Central Excise, Surat - [2013] 38 taxmann.com 298 (Ahmadabad - CESTAT)
- III. Mannubhai & Co. Vs. Commissioner of Service Tax (2011)(21)STR(65)- CESTAT (Ahmadabad)
- IV. M/S Mangalore Fertilizers & Chemicals Vs Deputy Commissioner 1991 (55) ELT 437
- V. CST Delhi vs. Convergys India Private Limited 2009 -TIOL -888-CESTAT -DEL-2009 (16) STR 198 (TRI. - DEL)
- VI. CST Delhi vs. Keane Worldzen India Pvt. Ltd. 2008 - TIOL -496 - CESTAT -DEL: 2008 (10) STR 471 (Tri. - Del)

I hold that appellant is eligible for benefits of Notification 18/2009-ST and 42/2012-ST. Having granted benefits on merit I am inclined to set aside penalty imposed u/s 78 as far as it relates to BAS exemption benefits admissible in terms of above two notifications and I do so.

7. Appeal No. 214/16-17 AND 251/16-17 SERVICE TAX ON BANKING CHARGE COLLECTED BY FOREIGN BANK { both OIO Matter}

7.1 In a present case of export from India, the appellant exporter had submitted the export documents to a bank in India and the said bank in turn had forwarded these documents to a foreign bank, which might be the banker of the importer or it might be the intermediary bank, which may in turn contact the banker of the importer in the foreign country. The said banker of the importer and/or the intermediary bank had charged certain



amounts and these charges have been recovered by them by deducting from the total amount to be remitted to the appellant exporter.

7.2 This issue has been dealt in more detail in the case of **Gujarat Ambuja Exports Ltd. vs. CCE, Ahmedabad** [STO 2012 CESTAT 715], wherein Hon'ble CESTAT found that the amount charged by foreign bank, prima facie cannot be considered as service received by the appellant (exporter).

7.3 Similarly, in the case of Gracure Pharmaceuticals Ltd. vs. CCE, Jaipur-I [STO 2011 CESTAT 702], it has been observed that the appellant had received the service of opening letter of credit from ICICI Bank and it is through ICICI Bank that they had received the export proceeds; and the charges for the services availed had been paid to the ICICI Bank; so, the prima facie view was taken that there was no banking and financial services, which had been received by the appellant from any foreign bank.

7.4 CBEC vide Circular No. 163/14/2012-ST dated 10.7.2012 has clarified that-

"In case any fee or conversion charges are levied for sending such money, they are also not liable to service tax as the person sending the money and the company conducting the remittance are located outside India. In terms of the Place of Provision of Services Rules, 2012, such services are deemed to be provided outside India and thus not liable to service tax."

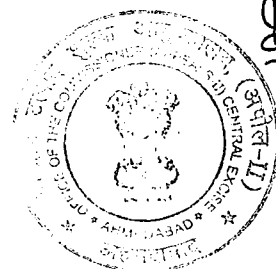
7.5 Mumbai Commissionerate vide Trade Notice No. 20/2013-14-ST-I dated 10.02.2014 has clarified that-

"Thus, services are provided by the foreign bank to the bank in India. Therefore, as a recipient of service, the bank in India, is required to pay service tax under erstwhile Section 66A prior to 1.7.2012 and under the provisions of Notification No. 30/2012-ST after 1.7.2012.

In cases where foreign banks are recovering certain charges for processing of import/ export documents regarding remittance of foreign currency, the banks in India would be treated as recipient of service and therefore required to pay service tax"

7.6 The question "Who is the service receiver?" has been answered at Para 5.3.3 of CBEC's Education Guide as follows.

"5.3.3 Who is the service receiver?"



Normally, the person who is legally entitled to receive a service and, therefore, obliged to make payment, is the receiver of a service, whether or not he actually makes the payment or someone else makes the payment on his behalf."

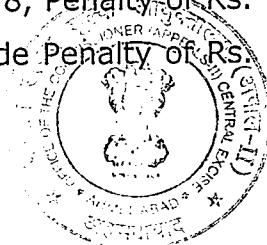
(i) As there is no privity of contract between foreign bank and Indian exporter, Indian exporter cannot be treated a person who is legally entitled to receive service of foreign bank. So, Indian exporter cannot be treated as recipient of service of foreign bank.

(ii) There is privity of contract between foreign bank and its client i.e. foreign buyer. So, foreign buyer is one of the recipients of service. There is no levy of service tax on the service provided by foreign bank to its client, as the service provider and service receiver both are located outside India and the Place of provision falls outside the taxable territory of India.

(iii) There is no formal agreement between the bank in India and foreign bank. However, by virtue of subscribing to Articles issued by International Chamber of Commerce, there is an implied contract between these banks, as mentioned in Mumbai Commissionerate's Trade Notice. This interpretation may be debatable in as much as the act of merely subscribing to such Articles, may not be considered to have been entered in formal contracts. In absence of any contract, it is debatable to say that Indian bank is legally entitled to receive service of foreign bank and thus foreign bank provides service to Indian bank in addition to providing service to its client.

7.7 Thus, I am of considered view that, services are provided by the foreign bank to the bank in India. Therefore, as a recipient of service, the bank in India, is required to pay service tax under erstwhile Section 66A prior to 1.7.2012 and under the provisions of Notification No. 30/2012-ST after 1.7.2012. I hold that appellant is not required to pay service tax of Rs. 1,16,151/- on Banking Service [Section 65(105)(zm)] and penalty u/s 78 imposed in proportion to Banking service. I set aside the OIO as far as it relates to confirmation of duty and imposition of penalty u/s 78 on Banking services.

7.8 I set aside OIO dated 26.12.2016 covering period 2014-15 wherein Service tax on banking [Section 65(105)(zm)] was confirmed with applicable interest. I set aside Penalty of Rs. 6,548/- u/s 78, Penalty of Rs. 655/- u/s 76 of FA, 1944 read with section 78B. I set aside Penalty of Rs. 10,000/- u/s 77(2) imposed.



DB

7.9. I set aside that portion of OIO dated 11.11.2016 covering period 01.04.2009 to 31.03.2014 wherein Service tax on banking [Section 65(105)(zm)] was confirmed with applicable interest. I set aside proportional Penalty imposed- u/s 78 as far it relates to Banking service.

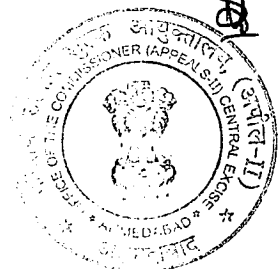
8. Appeal No. 214/16-17-BUSINESS SUPPORT SERVICE (GIFT) – BSS MATTER

8.1 Appellant have gifted the articles such as pen set, diaries, show piece of Indian Monument etc. as a gesture of friendship and relation to the person who had attended the meeting held at overseas and these articles have been purchased from duty free shop of Airport or from foreign market. I find that gift are given to foreign buyers are for promotion of sales and the expenditure incurred in foreign currency is taxable for service recipient appellant exporter as per provision of section 67 of FA, 1994 r/w section 66A of FA,1994. I am of considered the view that Rs. 4,166/- on Business support service (BSS) [Section 65(105)(zzzq)] received is payable u/s 66A of FA, 1994 by the appellant. I uphold the OIO, as far as it relates to (a) confirmation of service tax on BSS, (b) imposition of proportional penalty u/s 78 of FA 1994 for not payment of BSS and (c) interest payment u/s 75 on BSS late payment.

9.1 Needless to say the amount of penalty imposed u/s 78 shall be reduced to twenty five percent of penalty if it has been paid within 30 days of receipt of OIO for BSS matter.

10. Now I come to penalty imposed u/s 77 in OIO 11.11.2016. Substantial requirement of law (i.e. export of goods) having been fulfilled, then the matter may be regularized by imposing general penalty for violation of procedure part of Notification or rules. I uphold the penalty of Rs. 10,000/- imposed in impugned OIO, u/s 77 for failure to pay service tax by due date and not furnishing the information in respect of taxable services received from abroad and not declaring in ST-3 for contravention of section 68 & 70 of FA, 1994 r/w rule 4 & 7 of service tax rules, 1994. Further. I uphold the penalty of Rs. 10,000/- imposed u/s 77 in impugned OIO, for failure to make application of registration to JRO for taking registration. Wherever recover is to be effected in pursuance of this order, it is to recovered with interest u/s 75

11. Had the DGCEI not booked the case then non-payment would have gone un-noticed. I therefore hold invoking of extended period for recovery is justified.



Appeal No. 215/16-17 -PP on Shri Deepak Madhukar- OIO dt.**11.11.16**

12. Appellant assessee was eligible for credit, had he paid the service tax under reverse charge u/s 66A, therefore I see that matter is revenue neutral. I do not have reason to hold that Director had guilty mind to evade the duty. Moreover, in my present order also, substantial benefits have been granted to appellant in respect of BAS and Banking service, has been set aside. Therefore, I am inclined to set aside PP of Rs. 1,00,000/- imposed u/s 78A on Shri Deepak Madhukar Kulabkar, Director of Sushen Medicamentos P. Ltd. and I do so.

13. In view of above following appeals are allowed -

- I. appeal No. 214/16-17 (except that of BSS matter) filed by the appellant exporter,
- II. Appeal No. 215/16-17 filed by the Shri Deepak Madhukar Kulabkar and
- III. Appeal No. 251/16-17 filed by appellant exporter

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

14. The appeals filed by the appellant stand disposed off in above terms.

उमाशंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

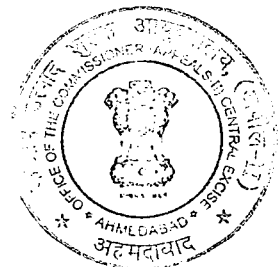
R. R. Patel
(R. R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD.

To,

(1)-M/s. Sushen Medicamentos Pvt. Ltd,
105, Atiish Annexie, Off C. G. Road,



Gulbai Tekra, , Ahmedabad- 380 006

(2) Shri Deepak Madhukar Kulabkar,
Director of Sushen Medicamentos P. L.
105, Atish Annexie, Off C. G. Road,
Gulbai Tekra, , Ahmedabad- 380 006

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner Central Tax, GST South, Ahmedabad-.
- 3) The Additional Commissioner, Central Tax , GST South, Ahmedabad
- 4) The Asst. Commissioner(System), GST South, Hq, Ahmedabad.
- 5) Guard File.
- 6) P.A. File.

