

	केन्द्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
केन्द्रीय कर शुल्क भवन	7 th Floor, Central Excise Building,	
सातवां मजिले पोलिटेक्निक के पास	Near Polytechnic,	
आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015	
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क फाइल संख्या : File No : **V2(ST)0245/A-II/2016-17 / 90/6 to 920**
 ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-001-APP-142-17-18**
 दिनांक Date : 20-10-2017 जारी करने की तारीख Date of Issue 22-11-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-Original No **SD-02/Ref-209/VJP/2016-17** Dated **30.11.2016**
Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

M/s. Mifamed Medical Pvt Ltd
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 :-

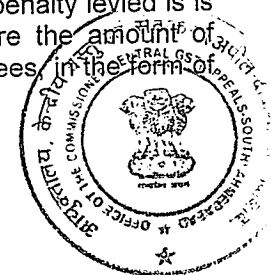
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is 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 उनके 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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,

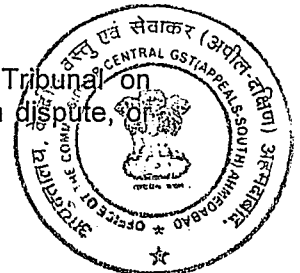
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



Due Diligence and Quality Inspection report coupled with Quality Assurance and Quality Control etc. Hence they have not acted as intermediary and are illegible for the refund of service tax credit. These activities are agreed to be provided by the appellants on principle to principle basis. It is further submitted that the service provided by an intermediary are altogether different from the service provided by appellants hence does not qualify as intermediary services. As regards ST-2 certificate, the appellants are registered under the category of 'Business Support Service' whereas, as per the ST-3 returns, they have shown the service under the category of 'Business Auxiliary Service'. It is submitted that the service of Mifamd India are in the nature of Business Support Service. However, services of intermediary are more akin to Business Auxiliary Services. Further w.e.f. 01.07.2012 categorization of service is given only for static purpose.

5. Personal hearing was granted and held on 06.10.2017. Mrs. Khushboo Kundalia, Chartered Accountants, appeared before me and reiterated the Grounds of Appeal.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. Further written submission made by the appellants.

7. The core issue to be decided is that whether the service provided by the appellants are intermediary services and place of provision of service is India, or otherwise. First of all it is pertinent to examine definition of Intermediary.

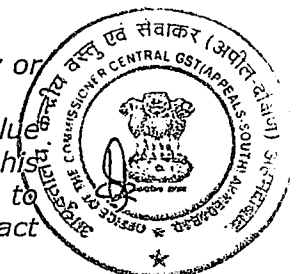
Definition of Intermediary services: As per para 5.9.6 of education guide;

an "intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any one time:

- i) the supply between the principal and the third party; and*
- ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged. For the purpose of this rule, an intermediary in respect of goods (such as a commission agent i.e. a buying or selling agent, or a stockbroker) is excluded by definition. Also excluded from this sub-rule is a person who arranges or facilitates a provision of a service (referred to in the rules as "the main service"), but provides the main service on his own account.*

In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

Nature and value: *An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact*



value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.

Separation of value: The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".

Identity and title: The service provided by the intermediary on behalf of the principal is clearly identifiable. In accordance with the above guiding principles, services provided by the following persons will qualify as 'intermediary services':-

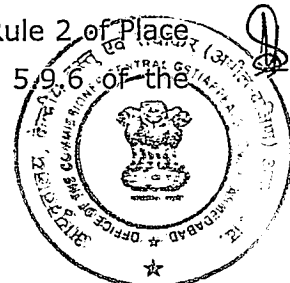
- i) Travel Agent (any mode of travel)
- ii) Tour Operator

- iii) Commission agent for a service [an agent for buying or selling of goods is excluded]
- iv) Recovery Agent

8. After careful consideration of MOU, I find that in present case Mifamed is not a middle men in concluding the deals. As per para 3 (b) of the MOU appellants have no power to conclude the deal. Only two parties are involved. Mifamed is into providing support service only. Majority of service are after the vendor orders placed directly by the MPAS, Denmark. Appellants have no relationship with the vendors. They are providing service at their own account and not as a consignment agent. All the activities performed by the appellants are supportive in nature, outsourced by the MPAS, Denmark to Mifamed India. Consideration is not based on the fixed percentage of sale/purchase value.

9. It can be concluded from the above that, as per clause 3 of the said MOU the appellants are carrying out the job of assisting in procurement of goods, development of vendors, carrying out inspection, liaising with manufacturers/suppliers, development of system & procedure for material procurement, as well as arranging/assisting in logistic operations for and on behalf of MPA/S Denmark. Further as per clause 11 of MOU MPAS, Denmark shall place purchase order directly on suppliers or shall enter into agreement/contracts for logistic operations with concerned agencies/service providers after taking into consideration reports/documents as prepared and sent by MIFAMED.

10. From the MOU it is very clear that the appellants are not arranging and facilitating the supply of goods between MPA/s Denmark and suppliers / manufacturers of the goods in India. Even their charges are not based on the percentage of sale or purchase value. In view of above the said act cannot be termed as intermediary services as defined in clause (f) of Rule 2 of Place of provision of Service Rules 2012, and as defined in para 5.9.6 of the



education guide. Thus the place of provision of service cannot said to be India but it is the recipient end i.e. Denmark. However the appellants are registered under the category of 'Business Support Service' whereas, as per the ST-3 returns, they have shown the service under the category of 'Business Auxiliary Service'. Impact of this on refund is required to be checked, I have earlier remanded the similar issue of the same party wherein department preferred appeal thus for uniformity of decision the aforesaid appeal is also required to be remanded.

11. In view of above discussions, I hereby remand the case as discussed above.

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

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

उमा शंकर

(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED

(K.H.Singhal)
SUPERINTENDENT,
CENTRAL TAX (APPEALS),
AHMEDABAD.

To,
M/s. Mifamed Medical Pvt. Ltd.,
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Ahmedabad- 380 054.

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad (South).
3. The Deputy/Assistant Commissioner, Central Tax, Division-VI (Vastrapur), Ahmedabad South.
4. The Assistant Commissioner, Central Tax (Systems), Ahmedabad South.
5. Guard File.
6. P.A. File.

