

क फाइल संख्या : File No : **V2(ST)0227/A-III/2016-17 / 9005 to 9009**  
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-143-17-18**  
 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-02/20/AC/2016-17** Dated **22.11.2016**  
**Issued by Assistant Commr STC, Service Tax, Ahmedabad**

घ अपीलकर्ता का नाम एवं पता  
**Name & Address of The Appellants**

**M/s. Cadila Healthcare 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 :-

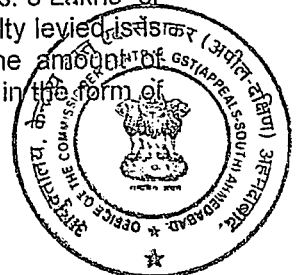
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

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

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

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

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied 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 Add. / 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 39फ 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,

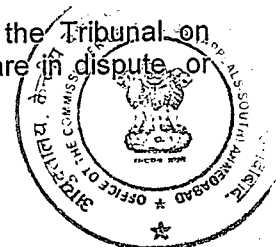
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

This appeal has been filed by M/s. Cadila Healthcare Ltd., Zydus Tower, Satellite Cross Road, Opp. Iscon Temple, Ahmedabad (*hereinafter referred to as 'the appellants'*) against Order-in-Original No.SD-02/20/AC/2016-17 dated 22.11.2016 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. This appeal is primarily against non-payment of service tax on commission income received by the appellant from M/s Paladin Labs Inc, Canada. The facts of the case is that based on an audit objection, periodical show cause notice dated 08.04.2015 was issued to the appellant, *inter alia*, proposing to recover service tax amounting to Rs.8,45,645/-on taxable value of Rs.68,41,790/- received as commission for the period from 2013-14 from M/s. Paladin Labs Inc., Canada for helping them to sale their pharmaceutical products in India; that such service is taxable in terms of Section 66B read with 66D of Finance Act, 1994 (Act) and Place of Provisions Rules 2002. The notice further demanded interest and also proposed penalty on the appellant. Vide the impugned order, *supra*, the said show cause notice was decided by the adjudicating authority by considering Rs.68,41,790/- as taxable receipt in terms of Section 66B read with 66D and Place of Provisions Rules 2002 *ibid* and confirmed the demand with interest. He also imposed penalty on the appellant for Rs.84,565/- under Section 76 of the Act and Rs.10,000/- under Section77(2) of the Act.

3. Being aggrieved with the impugned order the appellant has filed the present appeal. They stated that though the service falls under Business Auxiliary Service, but is not chargeable to Service Tax in terms of the provisions of Rule 3(1)(iii) of the Export of Services Rules, 2005; that the service was not provided to any Indian buyer but to the foreign supplier i.e. M/s. Paladin Labs Inc., Canada and will be qualified as export service even though the ender users/beneficiaries are Indian consumers. In support of their argument, they have quoted various judgments of the Tribunal. They also contended that no penalty is impossible as there is no willful suppression involved in the present case

4. Personal hearing in the matter was granted and held on 26.09.2017. Shri Vaibhav Vahia, Authorized representative of the appellant appeared for the same reiterated the grounds of appeal.

5. 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 appellant at the time of personal hearing. At the outset, I observe that the issue to be decided in the instant case is relating to payment service tax on commission income received by the appellant from M/s Paladin Labs Inc, Canada as commission agent for marketing the products of M/s Paladin Labs Inc.



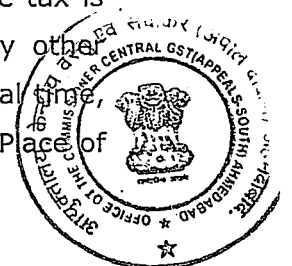
6. The appellant contended that no service tax is leviable on such commission income received by them as the transaction is very much covered under the ambit of Rule 3(1)(iii) of Export Service Rules, 2005; that the service which fall under the purview of Business Auxiliary Services and are provided by the Indian Commission Agent to Foreign client will not liable to service as it qualifies as export of service even though the end users/beneficiaries are India consumers. On other hand, the department is on a view that when the consumers of service provided were in India only, that ultimate consumption of service was in India and the appellant acts as an intermediary to connect its foreign principal to the end user of service who is also a consumer in India, no export service is involved in the present case.

7. Rule 6A of Service Tax Rules, 1994 gives the meaning of "Export of Service". The provision of any service provided or agreed to be provided shall be treated as export of service when:-

- a) the provider of service is located in the taxable territory,
- b) the recipient of service is located outside India,
- c) the service is not a service specified in the section 66D of the Act,
- d) the place of provision of the service is outside India,
- e) the payment for such service has been received by the provider of service in convertible foreign exchange, and
- f) the provider of service and recipient of service are not merely establishment of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act.

8. In the instant case, I observe that the provider of the service i.e the appellants, is located in the taxable territory of India and the recipient of the service i.e M/s. Paladin Labs Inc., Canada is located outside India. However, the place of provision in the present case is not outside India. Further, as per provision of section 66B of the Act, a service is taxable only when it is provided or agreed to be provided in the taxable territory. In the present case, the service is exclusively provided in the taxable territory of India and hence, without any ado I firmly proclaim that the service provided by the appellant is not within the ambit of Export Rules as contended by the appellant and is liable for service tax.

9. Moreover, Rule 7 of 'Place of Provision of Service Rules, 2012' clearly states that "Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided". In view of the above, it is very clear to deduce that as the place of provision is located in the taxable territory of India, the activity performed by the appellant cannot be considered as export service. Prior to introduction of 'Place of Provision of Service Rules 2012', when a service provider is located in India and renders service to other person located outside India, exemption to service tax is only subject to conditions as specified in Export of Service Rules or any other exemption notification applicable to that category of service. At the material time, imposition of Service Tax was recipient based but after the introduction of 'Place of



Provision of Service Rules, 2012', the issue has become destination based i.e. where actually the service was provided. The appellant, in the present case, have acted as an 'intermediary' as the recipient of the service has paid commission to them for selling their products in India. As per Rule 9 of the 'Place of Provision of Service Rules, 2012', the place of provision of following services shall be the location of the service provider:-

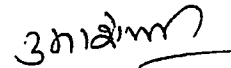
- (a) Services provided by a banking company, or a financial institution, or a non- banking financial company, to account holders;
- (b) Online information and database access or retrieval services;
- (c) **Intermediary services**;
- (d) Service consisting of hiring of means of transport, upto a period of one month.

In view of above, in case the service is of intermediary nature, the place of provision of service is again the location of service provider and hence, it cannot be considered as export service.

10. Thus, according to the conditions prescribed in the 'Place of Provision of Service Rules, 2012', I am of the considered view that the adjudicating authority has rightly confirmed the demand with interest and imposed penalties under appropriate sections as laid down in the Act. Therefore, the appeal filed by the appellant needs to be rejected.

11. In view of above discussion, I do not find any reason to interfere in the impugned order and accordingly, I reject the appeal filed by the appellant.

12 अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है। The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)

आयुक्त (अपील्स )

20 /10/2017.

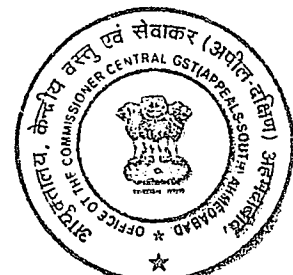
ATTESTED

(Mohan V.V)  
SUPERINTENDENT (APPEAL),  
CGST, AHMEDABAD.  
To,

M/s. Cadila Healthcare Ltd.,  
Zydus Tower, Satellite Cross Road,  
Opp. Iscon Temple, Ahmedabad

Copy to:

- 1) The Chief Commissioner, CGST, Ahmedabad.
- 2) The Commissioner, CGST, South.
- 3) The Dy./Asst. Commissioner, Service Tax, Division-7, South.
- 4) The Asst. Commissioner (System), South.
- 5) Guard File.
- 6) P. A. File.



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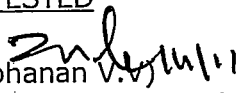
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(उमा शंकर)

आयुक्त (अपील्स - ~~II~~)

20 /10/2017.

ATTESTED

(Mohanah V.   
SUPERINTENDENT (APPEAL),  
CGST, AHMEDABAD.  
To,

M/s. Cadila Healthcare Ltd.,  
Zydus Tower, Satellite Cross Road,  
Opp. Iscon Temple, Ahmedabad

Copy to:

- 1) The Chief Commissioner, CGST, Ahmedabad.
- 2) The Commissioner, CGST, South.
- 3) The Dy./Asst. Commissioner, Service Tax, Division-7, South.
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- 5) Guard File.
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