



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,  
केंद्रीय उत्पाद शुल्क भवन,  
सातवीं मंजिल, पॉलिटेक्निक के पास,  
आम्बावाडी, अहमदाबाद-380015



☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/30&41/RA/A-II/2016-17  
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-021 & 022-2017-18  
दिनांक 20.07.2017 जारी करने की तारीख Date of Issue 07/08/2017

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित  
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Asstt. Commissioner, Div-II केन्द्रीय कर, Service Tax द्वारा जारी मूल आदेश सं  
SD-02/REF-23/DRM/2016-17 दिनांक: 27/04/2016, & SD-02/REF-133/VIP/2016-17 दिनांक:  
07/09/2016 से सृजित

Arising out of Order-in-Original No. SD-02/REF-23/DRM/2016-17 दिनांक: 27/04/2016, & SD-  
02/REF-133/VIP/2016-17 दिनांक: 07/09/2016 issued by Asstt Commissioner, Div-II, Central  
Tax, Service Tax

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**M/s MIFAMED MEDICAL PVT LTD.,  
Ahmedabad**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथारिथिति नीचे बताए गए सक्षम अधिकारी को  
अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as  
the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :  
**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक  
के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली  
: 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit  
Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New  
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first  
proviso to sub-section (1) of Section-35 ibid :

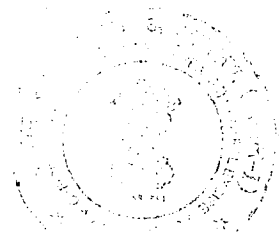
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे  
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के  
दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit: from a factory to a warehouse or to  
another factory or from one warehouse to another during the course of processing of the goods in a  
warehouse or in storage whether in a factory or in a warehouse.

(b) 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।

... 2 ...



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

(b) 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।

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रश्न संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

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

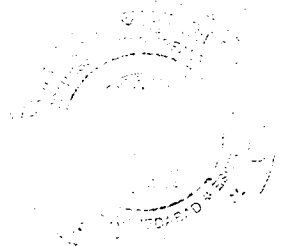
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the 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 संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील वाखिल करने के लिए पूर्व शर्त बना दिया गया है।

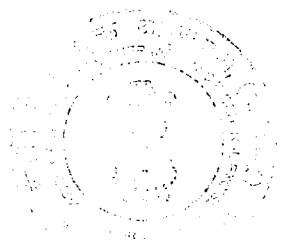
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



**:: ORDER-IN- APPEAL ::**

The Assistant Commissioner, Service Tax, Division-II, Ahmedabad (*hereinafter referred to as 'appellant'*) has filed the present appeals against the following two Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed in the matter of refund claim filed by M/s. Mifamed Medical Pvt. Ltd., 3<sup>rd</sup> Floor, 315, Zodiac Square, Opp. Gurudwara, S. G. Road, Ahmedabad (*hereinafter referred to as 'respondents'*);

Sr. No.	OIO No.	OIO date	Amount of refund claimed (₹)	Date of filing the refund claim	Rev. Order No.
1	SD-02/Ref-23/DRM/2016-17	27.04.16	2,79,483	21.03.16	26/2016-17
2	SD-02/Ref-133/VJP/2016-17	07.09.16	3,38,057	22.06.16	37/2016-17

2. The facts of the case, in brief, are that the respondents are holding Service Tax Registration under the category of 'Business Support Service' and had filed refund claims amounting to ₹2,79,483/- and ₹3,38,057/- on 21.03.2016 and 22.06.2016 respectively under Notification No. 27/2012-CE(NT) dated 18.06.2012 in respect of Service Tax paid on the specified services used for export of services/goods. The said refund claims were sanctioned vide the impugned orders by the adjudicating authority after rejecting the amount of ₹1,109/- and ₹288/- respectively, being non-eligible.

3. The impugned orders were reviewed by the Commissioner of Service Tax, Ahmedabad and issued review orders No. 26/2016-17 dated 05.09.2016 and 37/2016-17 dated 01.12.2016 respectively for filing appeal under section 84(1) of the Finance Act, 1994 on the ground that the impugned orders were not legal and proper and the refunds were sanctioned erroneously. The appellant claimed that the respondents were arranging or facilitating the supply of goods between M/s. Missionpharma A/S Denmark and suppliers/manufacturers of the goods in India. Thus, it was alleged that the respondents were engaged in providing intermediary services as defined under clause (f) of Rule 2 of Place of Provision of Services Rules, 2012. The appellant further alleged that the documents, pertaining to the refund claims, were not properly scrutinized by the adjudicating authority as in the impugned orders, the respondents were mentioned as a 100% EOU but it is not so. Further, the nature of service provided by the respondents was also not verified as in the ST-2 certificate, the respondents are registered under the category of

'Business Support Service' whereas, as per the ST-3 returns, the respondents have shown the service under the category of 'Business Auxiliary Service'. In light of the above mentioned discrepancies, the appellant filed the present appeal to pass an order for recovery of erroneously granted refund amount along with interest.

4. Personal hearing in both the matters was granted and held on 19.06.2017. Smt. Khushboo Kundalia and Shri Hitash N. Mundra, Chartered Accountants, appeared before me and submitted oral and written argument in support of their claim.

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

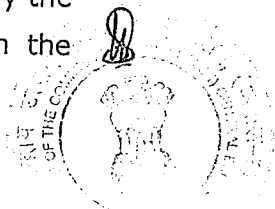
6. At the onset, I find that the appellant has filed the appeal stating that as per the MOU it is very clear that the respondents were arranging or facilitating the supply of goods between M/s. Missionpharma A/S Denmark and suppliers/manufacturers of the goods in India. In their counter argument, the respondents claimed that under the said MOU, the respondents had agreed to provide due diligence report and relevant information about the vendors which inter-alia includes Vendors Due Diligence and Quality Inspection report coupled with Quality Assurance and Quality Control etc. Though, the respondents have claimed that they have enclosed copy of the service agreement along with their written submission; no such copy could be traced out by me. Even the appellant has also failed to submit the copy of MOU in support of their claim. Thus, in absence of the copy of MOU/ Service Agreement, it becomes very difficult for me to come to any conclusion. Thus, I find that the adjudicating authority is the best suited one to call for the same and verify the claims afresh in light of the MOU, which, I believe, he has failed to go through during scrutiny of the claims.

7. Further, there are two more allegations put forth by the appellant in the appeals filed viz.;

(a) The respondents are not an EOU;

(b) They have wrongly quoted, in the ST-3 returns, the category of service to be 'Business Auxiliary Service' instead of 'Business Support Service'.

I find that the respondents have maintained a big silence on the above allegations. In paragraph 6 of both the appeals, the appellant has claimed that the respondents are not 100% EOU but the adjudicating authority has treated them as one. It is a serious allegation and I don't understand why the respondents have not countered the said allegation. Same goes with the



second allegation as mentioned in (b) above. The appellant, in paragraph 7 of the appeal pertaining to the claim amounting to ₹2,79,483/-, has alleged that as per their ST-2 certificate, the respondents are registered under the category of 'Business Support Service' whereas, as per the ST-3 returns, the respondents have shown the service under 'Business Auxiliary Service'. Once again, the respondents did not counter the above allegation. Thus, because of so many unanswered questions and so many vague allegations and counter arguments, both the cases are fit to be remanded back to the adjudicating authority for consideration of the claims afresh. In view of the above, I set aside both the impugned orders and remand back the cases to the adjudicating authority for deciding the claims afresh exclusively on merit only as per the discussions held in paragraph 6 and 7 of this order.

8. In view of my above discussions and findings, the appeal is disposed off accordingly.

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

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

*उमा शंकर*

(उमा शंकर)

CENTRAL TAX (Appeals), AHMEDABAD.

ATTESTED

*S. Dutta*  
20/07/17

(S. DUTTA)

SUPERINTENDENT,  
CENTRAL TAX (APPEALS),  
AHMEDABAD.



To,

M/s. Mifamed Medical Pvt. Ltd.,  
3<sup>rd</sup> Floor, 315, Zodiac Square,  
Opp. Gurudwara, S. G. Road,  
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.
4. The Assistant Commissioner, Central Tax (Systems), Ahmedabad
5. Guard File.
6. P.A. File.



