



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,

सातवीं मंजिल, पॉलिटैकनिक के पास,  
आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, GST Building,  
Near Polytechnic,

Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलीफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/73/Ahd-I/2017-18 /846 Jo 850  
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-302-2017-18  
दिनांक Date : 30-01-2018 जारी करने की तारीख Date of Issue 08/02/18

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

ग Assistant Commissioner, केन्द्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं SD-02/08/AC/2017-18  
दिनांक: 31/5/2017, से सृजित

Arising out of Order-in-Original No. SD-02/08/AC/2017-18 दिनांक: 31/5/2017 issued by Assistant  
Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Sushen Medicamentos Pvt. Ltd**  
**Ahmedabad**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति 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 अतत 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 प्रकिया 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।

*Uma Shanker*

... 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 हो।

(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 प्रपत्र 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 मैन्टल हॉस्पिटल कम्पाउण्ड, मेघाणी 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 अनुसूचि-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।

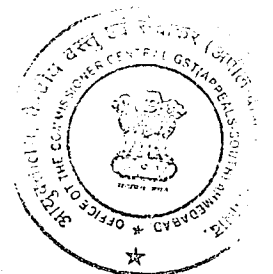
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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. Sushen Medicamentos Pvt. Ltd, 105, Ashish Annexe, Off. C. G. Road, Gulbai Tekra, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number SD-02/08/AC/2017-18 dated 31.05.2017 (*hereinafter referred to as 'impugned order'*) passed by the then Assistant Commissioner, Service Tax, Div-II, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

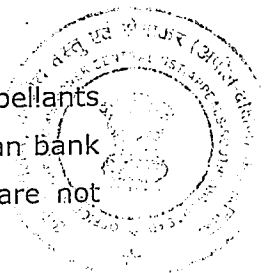
2. The facts of the case, in brief are that appellants were engaged in the business of trading of pharmaceuticals and engineering equipments, pharmaceutical bulk drugs, raw materials and packing materials and pharma management services. All their sales and services were in foreign countries except the sale of export licenses which they sale in the local market. They were providing taxable services under the categories of "Consulting Engineer Service, Scientific & Technical Consultancy Service, Maintenance or Repair Service, Business Auxilliary Service and Technical Testing & Analysis Service" for which they were registered with the Service Tax department having registration number AAFVS6288LSD001. They were issued show cause notice dated 06.08.2014 by the DGCEI, Ahmedabad for non-payment of Service Tax amounting to ₹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. The details of the said Service Tax amount are produced below;

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

As, it was found that the appellants had continued with the same practice, subsequently, a periodical show cause notice dated 06.04.2016, for the period 2014-15, was issued to them.

3. Again, for the next subsequent period of 2015-16, another periodical show cause notice, dated 07.02.2017, was issued which was confirmed by the adjudicating authority vide the impugned order. Vide the impugned order, the adjudicating authority confirmed the demand of Service Tax amounting to ₹21,268/- under Section 73 of the Finance Act, 1994 read with Section 68. He further ordered to recover interest under Section 75 of the Finance Act on the said confirmed amount. Further, penalty of ₹2,127/-, ₹10,000/- and ₹21,268/- under Sections 76(1) (read with Section 78B), 77(2) and 78 respectively of the Finance Act, 1994 was also imposed.

4. Being aggrieved with the impugned OIO dated 31.05.2017, the appellants have filed the present appeal before me wherein it is argued that an Indian bank has received the service of foreign bank and therefore, the appellants are not



service receiver, and hence, they are not liable to pay Service Tax on bank commission paid to foreign bank.

5. Personal hearing in the matter was granted on 24.01.2018. Shri Anil Gidwani, Tax Consultant, appeared before me and reiterated the grounds of appeal. Further he submitted copy of OIA No. AHM-EXCUS-001-APP-0110 to 112-17-18 dated 27.09.2017 issued in same matter but for previous period.

6. I have carefully gone through the facts of the cases on records, grounds of appeal in the Appeal Memorandum and oral submissions and judgments produced by the appellants at the time of personal hearing.

7. I find that in the present case of export from India, the appellants 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 appellants.

8. This issue has been dealt in more detail in the case of M/s. Gujarat Ambuja Exports Ltd. vs. CCE, Ahmedabad [STO 2012 CESTAT 715], wherein the Hon'ble CESTAT found that the amount charged by foreign bank, prima facie cannot be considered as service received by the exporter. Similarly, in the case of M/s. Gracure Pharmaceuticals Ltd. vs. CCE, Jaipur-I [STO 2011 CESTAT 702], it has been observed that the appellants 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. 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. "*

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"*

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

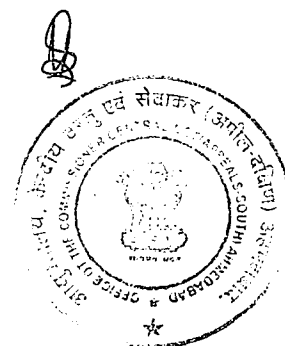
**"5.3.3 Who is the service receiver?"**

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.



10. 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 01.07.2012 and under the provisions of Notification number 30/2012-ST after 01.07.2012. I hold that appellants are not required to pay Service Tax of ₹ 21,268/- on Banking Service [Section 65(105)(zm)] along with 75 of the Finance Act 1994. I also set aside penalty imposed under Sections 76 read with Section 78B, Section 77(2) and 78 of the Finance Act 1994 imposed on the appellants.

12. In view of foregoing discussion I allow the appeal and set aside the impugned order.

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

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

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स)

CENTRAL TAX, AHMEDABAD.

ATTESTED

*S. Dutta*  
(S. DUTTA) 080218

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD.



To,  
M/s. Sushen Medicamentos Pvt. Ltd,  
105, Atiish Annexie, Off C. G. Road,  
Gulbai Tekra, , Ahmedabad- 380 006

**Copy to:**

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