ل. بالا الح	e					
		फंद्रीय कर आयुक्त (अपील)पत्यमेव जयतेठ/ठ THE COMMISSIONER (APPEALS), CENTRAL TAX, कंद्रीय कर भव्क,कंद्रीय कर भव्क,7th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015अम्बावाडी, अहमदाबाद-380015टेलेफेक्स : 079 - 26305136				
	<u>रजिस्टर्ड</u>	डाक ए.डी. द्वारा				
0	क	<u>डाक ए.डो. द्वारा</u> फाइल संख्या : File No : V2(ST)/94&102/Ahd-I/2017-18 /856 to 860 Stay Appl.No. NA/2017-18				
	ख	अपील आदेश संख्या Order-In-Appeal Nos. <b>AHM-EXCUS-001-APP-307&amp;308-2017-18</b> दिनाँक Date : <b>31-01-2018</b> जारी करने की तारीख Date of Issue <u>क्षि कि</u>				
		<u>श्री उमा शंकर</u> आयुक्त (अपील) द्वारा पारित Passed by Shri. Uma Shanker, Commissioner (Appeals)				
	ग	Arising out of Order-in-Original No <b>. SD-02/REF-316/VJP/2016-17</b> दिनॉक <b>: 13/4/2017 &amp; CGST-</b> VI/Refund/04/Mifamed/2017-18 दिनॉक: 11/08/2017issued by Assistant Commissioner, Central Tax, Ahmedabad-South				
	ध	अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent Mifamed Medical 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 a 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 :					
0	(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 चाहर। (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 :					
		यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे 1र 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 कों) निर्यात किया गया माल हो।				
	G. file					
		उदा एवं सेव				

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(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 मामलें 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 डयूटी केडिट 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 नियक्त 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः– Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35—बी⁄35—इ के अंतर्गतः—

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 <u>(सिस्टेट)</u> की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल 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.



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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. Registar 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 any nominate public sector bank of the place where the bench of the place.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश 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 हैं।

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 not withstanding 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 रू.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 in 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 <u>(सिस्टेट)</u>, के प्रति अपीलो 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) *Gection)* 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' दाखिल 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.

(III) वागणाम payable पायला रेपाए ए जे सार प्रवास के विवादित हो तो माँग किए गए शुल्क के 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."



V2(ST)94-102/Ahd-I/2017-18

एतं सेवाक

## :: ORDER-IN- APPEAL ::

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

Sr.	OIO No.	OIO date	Amount of	Date of
No			refund	filing the
			claimed (₹)	refund
				claim
1	SD-02/Ref-316/VIP/2016-17	13.04.17	3,17,740	25.01.2017
2	CGST-VI/Refund/04/Mifamed/2016-17	11.08.17	3,23,472	28.04.2017

2. The facts of the case, in brief, are that the appellants were holding Service Tax Registration under the category of 'Business Support Service' and had filed refund claims amounting to ₹3,17,740/- and ₹3,23,472/- for the periods January 2016 to March 2016 and April 2016 to June 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. The said refund claims were rejected vide the impugned orders by the adjudicating authority stating that the refund claims are non-eligible being intermediary services and hence, the services rendered by the appellants are taxable being provided in the taxable territory of India.

**3.** Being aggrieved with the impugned order, the appellants filed the present appeals before me. The appellants argued that the services rendered by them to M/s. Missionpharma A/S Denmark, do not fall under the category of intermediary service as they were offering Vendors Due Diligence and Quality Inspection report coupled with Quality Assurance and Quality Control.

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etc. to M/s. Missionpharma A/S Denmark. In support of their claim, the appellants submitted a copy of Memorandum of Understanding which was made between the appellants and M/s. Missionpharma A/S Denmark.

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**4**. Personal hearing in both the matters was granted and held on 31.01.2018. Smt. Khushboo Kundalia and Shri Hitesh N. Mundra, Chartered Accountants, appeared before me and reiterated the contents of their grounds of appeal. They further submitted oral and written argument in support of their claim. Smt. Kundalia explained that both old and new agreements have the same contents. She submitted copy of both the agreements.

**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.

I have carefully gone through the facts of the case on records, grounds 6. of the Appeal Memorandum, the Written Submission filed by the appellant and oral submission made at the time of personal hearing. To begin with, I find that there has been a delay occurred in filing both the appeals by the appellants. The impugned orders, pertaining to refund claims amounting to  $\mathfrak{T}$ 3,17,740/- and ₹3,23,472/-, were issued on 13.04.2017 and 11.08.2017 respectively whereas, the appellants have claimed, in Form ST-4, to have received the same on 08.09.2017 and 21.08.2017 respectively. However, they have not submitted any documentary evidence in support of their claim. Mere verbal assertion has no legal base under the eyes of law. In view of the above, I find that the appeal involving refund amount of ₹3,17,740/- is delayed by nearly 5 months (they filed the appeal before me on 19 September 2017) and the appeal involving refund amount of  $extsf{T}$ 3,23,472/- is delayed by 8 days (they filed the appeal before me on 18 October 2017 and no request for condonation of delay is filed) . The Government has provided certain facilities, time to time, for the convenience of the assessee. Knowingly or unknowingly, if one fails to comply with the Service Tax provisions, then there are rules to facilitate the assessee under certain terms and conditions. Assessee, if not satisfied with the demand, may prefer appeal to the higher authorities [in this case, the Commissioner (Appeals)] within 2 months from the date of receipt of order

V2(ST)94-102/Ahd-I/2017-18 from such adjudicating authority. The Commissioner (Appeals) **may** allow a further period of only **1 month,** if sufficient cause for late filing of appeal is shown and proved to him. Thus, in *view of the above* facts, the appeal filed by the appellant is time barred and hence, I reject the appeals on the ground of limitation itself.

**7**. Accordingly, both the appeals filed by the appellants are rejected being time barred.

8. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

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

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(उमा शंकर)

CENTRAL TAX (Appeals), AHMEDABAD.

ATTESTED

(S. DUTTA)

SUPERINTENDENT, CENTRAL TAX (APPEALS), AHMEDABAD.



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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).
- 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.



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