



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,  
सातवीं मंजिल, पॉलिटेक्निक के पास,  
आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, GST Building,  
Near Polytechnic,  
Ambavadi, Ahmedabad-380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/134/Ahd-I/2017-18  
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-352-2017-18  
दिनांक Date : 26-02-2018 जारी करने की तारीख Date of Issue

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

ग Arising out of Order-in-Original No. CGST/WS08/Ref-56/PNG/17-18 दिनांक: 24/11/2017 issued  
by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Advantmed India LLP  
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) केंद्रीय 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 :

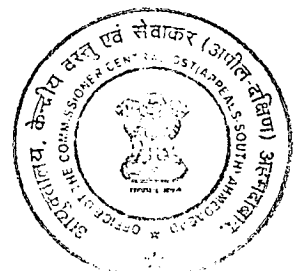
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(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 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 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 Appellate 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 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.

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

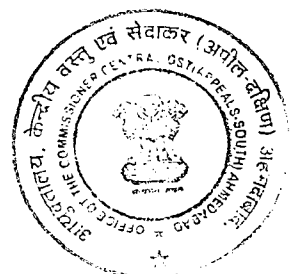
M/s AdvantMed India LLP, 515, Pinnacle Business Park, Nr. Prahladnagar Garden, Corporate Road, Ahmedabad- 380 015 (STR ABGF A3344L SD001) (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number – CGST/WS08/Ref-56/ PNG/17-18 dated 24.11.2017 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, CGST South, Div-VIII, Ahmedabad- South, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief are that appellant had executed service agreement with advantMed LLC, whose headquarter is in USA. Appellant had filed refund claim on 08.09.2017 for quarter ending January,2017-March,2017 for Rs. 7,10,786/- u/n 27/2012-CE (NT) dated 18.06.2012 r/w rule 5 of CCR, 2004

3. Adjudicating authority concluded that AdvantMed LLC (USA based) and AdvantMed LLP, the appellant (Indian Entity) are not independent parties and does not have principal to principal relationship; that appellant is merely establishment of AdvantMed LLC; that AdvantMed LLP, (Indian Entity) is a member of AdvantMed LLC (USA based);that Indian entity is providing IT enabled end service and "Business support Service"- BSS to their recipient; that remittance received from the holding company can not be said as export proceeds but it is reimbursement charge; that provider of service and recipient of such service merely establishment of distinct person as proposed in rule 6A(f) of STR, 1994 r/w explanation 3(b) of clause (44) of Section 65B. Adjudicating concluded that service provided by AdvantMed LLP, (Indian Entity) fails to qualify as export of service as defined in rule 6A(e) of STR, 1994; that appellant has taken the cenvat credit of ineligible input services like outdoor catering , restaurant service and travelling service; Whole claim was rejected by the adjudicating authority on above conclusion.

4. Being aggrieved with the impugned order, the appellants preferred an appeal on 15.12.2017 before the Commissioner (Appeals-II), Ahmadabad wherein it is contended that-

- a. AdvantMed LLC (USA based) is a company incorporated under USA by laws and AdvantMed LLP, the appellant (Indian Entity) is incorporated under Indian laws. Two companies are altogether separate entities of different owner located in different countries where said entities incorporated in respective law.



- b. Adding mark up of 20% of cost incurred shows that both the entities are separate and are associated with each other with sole purpose of doing business.
- c. From explanation 3(b) of Section 65B (44) of FA, 1944, it transpires that when a person has one establishment in taxable territory and other in a non-taxable territory then it shall be treated as establishment of distinct persons.
- d. AdvantMed LLP, the appellant (Indian Entity) is neither agency nor branch nor representational office of AdvantMed LLC, (USA) as envisaged in explanation 4 of Section 65B (44) of FA, 1944.
- e. Ownership of said two companies lies with to different individual, therefore it is erroneous to consider two separate entities as merely establishment of a person with explanation 3(b) ibidi and rule 6A(1) of STR, 1994..
- f. Credit said to be ineligible is solely used for business purpose and not for personal use of employee. Said allegation of denial of credit was not part of SCN.

5. Personal hearing in the case was granted on 31.01.2018. Shree Gunjan Shah, CA and Shree Ruchi Jota, Advocate appeared before me and reiterated the grounds of appeal. They agree to not claim catering service, Accommodation service in integral for visiting person from abroad.

#### DISUSSION AND FINDINGS

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

7. Question to be decided is whether or not AdvantMed LLP, the appellant (Indian Entity) and AdvantMed LLC, (USA) is distinct entity as envisaged in explanation 4 of Section 65B (44) of FA, 1944 r/w rule 6A(f) of STR, 1994.

8.1 It is pertinent to discuss the provisions of Rule 6A which read as under;

**Rule 6A of the Service Tax Rules 1994**, deals with the provisions relating to **export of services**. It states that;

"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 the service is located outside India,  
 (c). the service is not a service specified in section 66D of the Act,  
 (d) the place of provision of 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 the service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.**

8.2 Explanation 3 of clause (44) of Section 65B of the Act- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

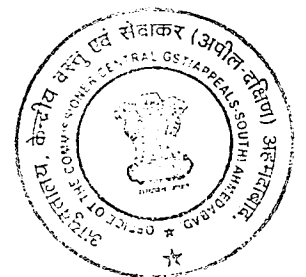
8.3 From the plain reading of the text of **point (f) of Rule 6A**, it is understood that service provider and service recipient should not be a mere establishment of a **person** to qualify the provision of service as **Export Service**. Thus it implies that service provider/service receiver should not be branch, agency and representational office of other.

9.1 Here once it is established by the adjudicating authority that the said claimant is a merely establishment of the AdvantMed LLC, (USA) and decided that it cannot be qualified as export of services. Once service are held to be not the export of services then adjudicating authority had to examine the taxability of services provided by the appellant as they have not paid the service tax on so called export services and also to examine the availability of Cenvat credit to the appellant.

9.2 In case of Tandus Flooring India Private Limited, in (Ruling No.AAR/ST/03/2013, Application No. AAR/44/ST12/12-13 decided on August 26, 2013), needs to be examined by the adjudicating authority thus it is felt necessary to remand the case for to re-examine in view of the above referred citation.

10. I hereby remand the case back to adjudicating authority in view of discussion above.

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



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

*उमा शंकर*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

*R.R. Patel*

(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD

To,

M/s AdvantMed India LLP, 515,

Pinacle Business Park,

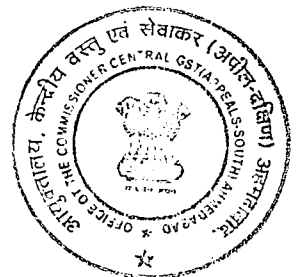
Nr. Prahladnagar Garden,

Corporate Road,

Ahmedabad- 380 015

Copy to:

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



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