



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५,
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



☎ 26305065-079 : टेलिफैक्स 26305136 - 079 :

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)19&20/Ahd-South/2019-20 / 12HH5 TO 12HH9
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-044&045-2019-20
दिनांक Date : 23-09-2019 जारी करने की तारीख Date of Issue 23/09/2019
- श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित
Passed by Shri. Gopi Nath, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. SD-02/REF-316/VJP/2016-17 दिनांक: 13.04.2017 & CGST-
VI/Refund/04/Mifamed/2017-18 दिनांक: 11.08.2017 , issued by Assistant Commissioner, Div-VI,
Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Mifamed 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, 4th 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.



- (क) 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।
- (A) 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.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

- (B) 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।

- (c) 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 दिनोंक 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. 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 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' 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 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

This appeal is arising out of Hon'ble CESTAT, Ahmedabad's order No.A/10401/2019 dated 22.02.2019 passed against Commissioner (Appeals) OIA No.AHM-EXCUS-001-APP-307 & 308-2017-18 dated 31.01.2018.

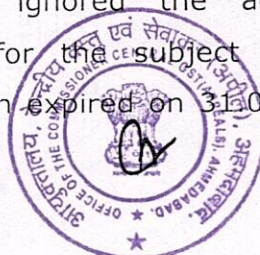
2. Briefly state, the facts of the case are that M/s. Mifamed Medical Pvt. Ltd., 3rd Floor, 315, Zodiac Square, Opp. Gurudwara, S. G. Road, Ahmedabad (hereinafter referred to as the 'appellants') have filed two appeals against the following two Orders-in-Original (hereinafter referred to as 'impugned 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.

S.N O	OIO No.	OIO date	Amount of refund claimed (₹)	Date of filing the 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

The appellants, a Service Tax Registrant under the category of 'Business Support Service' were engaged in providing the service to MPA/S Denmark (for short-MPAS). They 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 read with Rule 5 of Cenvat Credit Rules 2004 (CCR). The said refund claims were rejected by the adjudicating authority, vide impugned orders on the grounds that the services being provided by the appellants were in the nature of "intermediary services" for which Place of Provision of Service was the location of service provider in terms of Rule 9 of the Place of Provisions of Service Rules, 2012 (for short-POPS Rules) and hence, the services rendered by the appellants cannot be termed as export of services.

3. Being aggrieved with the impugned order, the appellants filed the present appeals before the Appellate Authority mainly on the grounds that:

- The services rendered by them to MPAS 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 etc. to MPAS. The appellants submitted a copy of Memorandum of Understanding which was made between the appellants and MPAS.
- The adjudicating authority has ignored the agreement dated 15.02.2016 which is applicable for the subject period and has considered the old agreement which expired on 31.03.2016; that the



adjudicating authority has presumed something which is not written in the agreement.

- Classification of service is not relevant in post negative list regim; that classification of service under 'business auxiliary service of business support service is not relevant in negative e list regime, what is relevant is whether they are covered under the definition of intermediary or not.

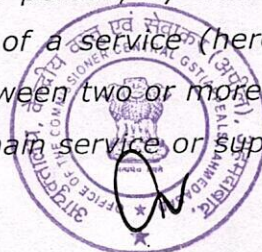
4. The said appeals were rejected by the Appellate Authority, vide OIA OIA No.AHM-EXCUS-001-APP-307 & 308-2017-18 dated 31.01.2018 on the grounds of limitation of filing of appeal under Section 85 of Finance Act, 1994. The appeal filed by the appellant against the OIA before the Hon'ble CESTAT, Ahmedabad was decided vide its order dated 22.02.2019 supra. The Hon'ble CESTAT has set aside the said OIA dated 31.01.2018 and remanded the case for fresh decision on merit by the Appellant Authority.

5. Hearing in both the appeals was held on 11.09.2019. Smt. Khushboo Kundalia and Shri Gaurav Kodrani, Chartered Accountants, appeared for hearing and reiterated the submission of original appeal and requested to allow the appeals on the basis of Commissioner (Appeals), Ahmednad's decision dated 23.03.2018 and 21.05.2018, in their own case pertaining to the same issue for earlier periods.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and submissions made by the appellants at the time of personal hearing. I find that the core issue to be decided in the instant appeals is as to whether the service provided by the appellants are "Intermediary Service" or otherwise.

7. I find that the adjudicating authority has denied the refund claim in respect of unutilized Cenvat credit on account of export of output service on the ground that the service provided by the appellants cannot be treated as export of service as the service provided by them to overseas client (MPAS) are "intermediate service", as defined under Rule 9 of POPS Rule is correct or otherwise; that the appellants are arranging or facilitating the supply of goods between MPAS and suppliers/manufactures of goods considered to be in India.

8. I find that as per definition 2(f) of POPS, the term "Intermediary" means-"a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on



his account”.

8.1 Further, as per guidance note 5.9.6 of Education guide (Taxation of service) - `intermediary service means-

5.9.6 What are "intermediary service"?

Generally, an "Intermediary" is a person who arranges or facilitates a supply of goods, or provision of service, or both, between two persons, without material alteration or further processing. Thus, an interdediary is involved with two supplies at any one time:

- i) the supply between the principal and the third party; and*
- ii) the supply of his own service (agency service) to his principal, for which a fee pr commission is usually charged.*

For the purpose of this rule, an intermediary in respect of goods (such as a commission agent i.e a buying or selling agent, or a stockbroker) is excluded by definition.

Also excluded from this sub-rule is a person who arranges or facilitates a provision of a service (referred to in the rules as "the main service"), but provides the main service on his own account.

9. The appellants submitted that as per Memorandum of Understandings and agreement dated 15.02.2016 between them and MPAS, they agreed to provide due diligence report and relevant information about vendor which inter-alia includes Vendor Due Diligence and Quality Inspection report coupled with quality assurance and quality control etc.; that the adjudicating authority has ignored the agreement dated 15.02.2016 which is applicable for the subject period and has considered the old agreement which expired on 31.03.2016. I find the appellant is engaged in provision of business support service and has filed an application under Rule 10 of the Income Tax Rules, 1962 on 30.03.2013, proposing to enter into a unilateral Advance Pricing Agreement with CBDT to determine arm's length price of the International transaction. As per service level agreement dated 15.02.2016, which is in supersession to MOU dated 25.03.2013 and amended to align the terms and condition entered with the appellants and CBDT is valid for the period from 01.04.2015 to 31.03.2018. As per the said agreement, the appellants would provide-

- Procurement and vendor due diligence*
- Quality inspection/Audit coupled QA and QC*
- Follow-up on purchase orders and Logistics*
- Logistics support in terms of documentation requirement of clients and follow up with shipping lines*
- IT hardware breakdown support*
- Accounting support*
- Tender preparation and related document support*
- Layouts and leaflets preparation and coordination*
- Product registration and dossier preparation.*

10. From the agreement dated 15.02.2016, I find that the service agreement is between the service provider and service recipient only and the provisions of service by the appellant is at their own account and not on behalf of a third party. Further, all the service listed in the service agreement, referred to above, is supportive in nature, outsourced by MPAS



to the appellant. Further, I find that consideration received by the appellant is not based on percentage of sale of purchase price so as to indicate that the appellant acts as a middleman or commission agent. Further, I find that there is nothing in the agreement which suggest that the appellants act as a middleman or arranging facilitating the provision of service. In the instant case, the agreement clearly supports the fact that the service provided by the appellant cannot be termed as "intermediary service". Consequently, Rule 9 of POPS becomes inapplicable to the appellants case and Place of Provisions of Service is to be decided in terms of default Rule 3 of POPS- i.e the place of provision of a service shall be the location of the recipient of service. The service recipient being located outside India, the Place of Provisions of Services does not come in the way of export status to the services provided. In the circumstances, the impugned order denying refund on the ground that the services provided by the appellants were not export of service does not have any merit and requires to be set aside with consequential relief.

11. In view of above discussion, I do not find any merit in the impugned orders and accordingly, I set aside the same and allow appellants appeals. The appeals filed by the appellants stand disposed off in above terms.

(Gopi Nath)
Commissioner (Appeals)
Date : 23.09.2019

Attested

(Mohan V.V)
Superintendent (Appeal),
Central Tax, Ahmedabad.

BY RPAD/Speed Post

To,

M/s. Mifamed Medical Pvt. Ltd.,
3rd 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.



