आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 - टेलेफैक्स07926305136

DIN : 20230564SW0000323573

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/961/2023/1496-1500

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-28/2023-24**
दिनाँक Date : **11-05-2023** जारी करने की तारीख Date of Issue 17.05.2023

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of OIO No. **CGST/WS07/Ref-19/RAG/AC/2022-23** दिनाँक: **29.11.2022** passed by Assistant Commissioner, Division VII, CGST, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Zydus Lifesciences Ltd
Zydus Corporate Park,
Scheme No. 63, Survey No. 536,
Khoraj (Gandhinagar), Near Vaishnodevi Circle,
S.G. Highway, Ahmedabad - 382481

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 पूवोक्त 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 हानिकार खाने 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 मे 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 मामलें 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 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 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 दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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(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. 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 the Tribunal is situated.

(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 होत 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

31ण सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

a. *(Section)* खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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:

(ccii) amount determined under Section 11 D;
(cciii) amount of erroneous Cenvat Credit taken;
(cciv) 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

The present appeal has been filed by M/s. Zydus Lifesciences Ltd., Zydus Corporate Park, Scheme No. 63, Survey No. 536, Khoraj (Gandhinagar), Near Vaishnodevi Circle, S.G. Highway, Ahmedabad – 382 481 (hereinafter referred to as the "appellant") against Order in Original No. CGST/WS07/Ref-19/RAG/AC/2022-23 dated 29.11.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division – VII, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant had on 13.10.2010 filed an application for refund of service tax amounting to Rs. 2,36,900/- and interest amounting to Rs. 1,181/-. The refund was filed on the grounds that the service tax paid by them on the royalty in the form of annual trademark licensing fees received from the Partnership firm M/s. Zydus Healthcare was in fact not payable. The appellant was issued a Show Cause Notice bearing No. STC/Refund/339/Div-III/11-12 dated 09.09.2011 proposing rejection of the refund claim. The said SCN was adjudicated vide OIO No. STC/Ref/17/GAR-AC/Div-III/11-12 dated 28.04.2011 and the refund claim was rejected. Being aggrieved, the appellant filed an appeal before the Commissioner (Appeals-IV), Central Excise, Ahmedabad, who vide OIA No. 215/2011(STC)/K.ANPAZHAKAN/Commr.(A)/Ahd dated 12.08.2011 upheld OIO dated 28.04.2011 and rejected the appeal filed by the appellant.

2.1 Being aggrieved, the appellant filed an appeal before the CESTAT, Ahmedabad. The Hon'ble Tribunal vide Final Order No. A/11661-11675/2021 dated 27.04.2021 allowed the appeal and held that the appellant are entitled for refund and set aside the OIA dated 17.04.2012. Being aggrieved, the department filed Tax Appeal before the Hon'ble High Court of Gujarat. The Hon'ble High Court has vide Order dated 30.03.2022 rejected the appeal filed by the department.

2.2 The appellant, vide letter dated 04.04.2022, approached the jurisdictional office of Central Tax, Ahmedabad requesting that the refund be sanctioned to them along with interest under Section 11BB of the Central Excise Act, 1944. The adjudicating authority vide the impugned order sanctioned the refund amounting to Rs. 2,38,081/- along with interest amounting to Rs. 4,761/-. In respect of the appellant's claim for interest, the adjudicating authority held that "*the claimant is eligible for the interest under Section 11BB of the Finance Act, 1994 after three months from filing the impugned application for refund i.e. 05.04.2022.*"

3. Being aggrieved with the impugned order sanctioning interest after expiry of three months from 05.04.2022, the appellant have filed the present appeal on the following grounds :

i. The interest on delayed refund ought to have been calculated from expiry of three months from the date of application i.e. 11.01.2011 in terms of Section 11BB of the Central Excise Act, 1944.

ii. The impugned order wrongly grants interest from the date when intimation was made to the Department regarding Final Order passed by CESTAT, Ahmedabad.

iii. Reliance is placed upon the judgment in the case of Ranbaxy Laboratories Ltd. Vs. UOI – 2011-TIOL-105-SC-CX; Herrennknecht India Pvt. Ltd. Vs Asstt. Commissioner, CGST, Chennai – 2020(12) TMI 910-Madras High Court; UOI vs. Swaraj Mazda Ltd. – 2010 (3) TMI 1036-SC; Commissioner of Central Excise, Silvassa Vs. Sterlite Industries Ltd. – 2017 (8) TMI 312- Bombay High Court; CCE, Ahmedabad Vs. Olympic Synthetics – 2007 (11) TMI 293; Qualcomm India Pvt. Ltd. Vs. UOI in Writ Petition No. 1775 of 2020.

iv. The adjudicating authority erred in not appreciating that the issue pertained to applicability of service tax on the royalty amount received by them and not on the remuneration received from the Partnership firm.

v. They had paid service tax on the amount of royalty received from the partnership firm under the bona fide belief that the activity is classifiable under the category of Intellectual Property Service.

Subsequently they realized that there existed a relationship of partner and partnership firm between them and the partnership firm. The Partnership firm is strictly not a person or a legal entity distinct from its partners. Thus, it does not have any independent existence.

vi. Accordingly, they took the stand that the service tax was erroneously paid and, accordingly filed refund claim of the service tax paid, along with interest.

4. The appellant had vide letter dated 14.02.2023 requested for early hearing on the grounds that the question of law involved in the appeal is settled and that the amount involved is having huge financial implications for the Company. The request of the appellant was acceded to and Personal Hearing in the case was held on 16.03.2023. Shri Jigar Shah, Advocate, Shri Rashmikant Shah, General Manager, and Shri Vaibhav Vahia, Senior Manager, appeared on behalf of appellant for the hearing. Shri Jigar Shah reiterated the submissions made in appeal memorandum.

5. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing as well as the materials available on records. The issue before me for decision is whether the appellant are eligible for interest on delay in sanction of refund after three months from the date of application for refund as claimed by them, or after three months from the date of their request for sanction of refund along with interest in terms of the Order of the Hon'ble Tribunal.

6. It is observed from the materials available on record that the appellant had filed claim on 13.10.2010 for refund of the service tax paid by them on the royalty received by the from the Partnership firm. The claim was filed by the appellant on the grounds that service tax was not payable. However, the department was of the view that the appellant was liable to pay service tax and, therefore, they were not entitled to claim refund. The department was also of the view that service tax was paid by the appellant pursuant to self assessment and it was required to be determined that the

appellant had filed an appeal against the said self assessment. Therefore, the a SCN was issued to the appellant which was adjudicated and the refund claim filed by the appellant was rejected on the grounds that the appellant had provided taxable services and, were accordingly, liable to pay service tax.

6.1 In the appeal filed by the appellant before the Commissioner (Appeals-IV), Central Excise, Ahmedabad, the Commissioner (Appeals) had at Para 15 of OIA dated 11.04.2011 held that :

> " Hence, I hold that the license fee received by the appellants towards the use of trademark, is from their individual capacity as a Limited Company and is liable to Service Tax under 'Intellectual Property Service'. The appellant has rightly paid Service Tax under 'Intellectual Property Service' and hence the refund application is liable to be rejected".

Accordingly, the appeal filed by the appellant was rejected by the Commissioner (Appeals).

6.2 In the appeal filed by the appellant before CESTAT, Ahmedabad, it was observed by the Hon'ble Tribunal, Ahmedabad, that :

> "The issue to be considered by us in the present case is that whether the appellant is liable to pay the Service Tax when the appellant is a partner and the service recipient is a partnership firm. If the appellant is not liable to pay the Service Tax, whether the Service Tax so paid by the appellant along with interest, is refundable, even when the assessment of payment of service tax was not challenged".

6.3 The Hon'ble Tribunal, Ahmedabad has decided the issue vide Final Order dated 27.04.2021 wherein it was held that the remuneration received by the appellant is merely a special share of profits in terms of the partnership deed and, therefore, such remuneration cannot be considered as consideration towards any services between two persons, and, hence, not liable to service tax. The Hon'ble Tribunal, therefore, held that the appellant are entitled for refund of the claim made by them. The appeal filed by the appellant was allowed with consequential relief, in accordance with law.

6.4 It is observed from the order of the Commissioner (Appeals) that the issue of whether the Royalty received by the appellant was liable to service

tax was decided. The Hon'ble Tribunal in their Order dated 27.04.2021 decided the issue of whether the remuneration received by the appellant was liable to service tax was decided. While the Commissioner (Appeals) has held that the appellant were liable to pay service tax on the Royalty received by them, the Hon'ble Tribunal had set aside the order of the Commissioner (Appeals) and held that the appellant were not liable to pay service tax.

6.5 It is further observed that though the issue involved in the present appeal pertains to payment of service tax on Royalty received by the appellant from the partnership firm, the same was not specifically deliberated or decided by the Hon'ble Tribunal, Ahmedabad in their Order dated 27.04.2021.

6.6 It is pertinent to note that the appellant had on their own self assessed and paid service tax on the royalty received by them from the partnership firm. Subsequently, they were of the view that service tax was not payable on the royalty received by them and, therefore, a refund claim was filed by them in respect of the service tax so paid. It is pertinent to note that the definition of 'assessment' as per Rule 2(1)(b) of the Service Tax Rules, 1994 includes self assessment, reassessment, provisional assessment and best judgment assessment. However, there does not exist any provision in the Finance Act, 1994 for reassessment of tax paid consequent to self assessment. It is also pertinent to refer to the Order dated 27.04.2021 of the Hon'ble Tribunal, Ahmedabad, the relevant portion of which is reproduced below :

> "4.6 Revenue have strongly argued that appellant's refund is not maintainable on the ground that the self-assessment of Service Tax payment has not been challenged by filing appeal before the Commissioner (Appeals). In this regard, he relied upon various judgments as cited in the submission of the learned Authorised Representative above. The Revenue has mainly relied upon the Larger Bench judgment of the Hon'ble Supreme Court in the case of *ITC Ltd.* (supra). On careful reading of the said judgment, we find that the issue involved in the *ITC* case is that whether non-filing of appeal against assessed Bills of Entry will deprive the importer is right to file a refund claim under Section 27 of the Customs Act, 1962. In the Customs matter, the appellant needs to file appeal against any decision or order passed by the officer of Custom lower in the rank than the Principal Commissioner of Customs or Commissioner of Customs. An appeal can be filed before the Commissioner (Appeals) in terms of Section 128 of the Customs Act. Unlike Service Tax, in customs even though self-assessment is done by the assessee, but the same is

verified and allowed the clearances by the Custom officer on the Bills of Entry. It is that Bills of entry which is treated as order of assessment and any aggrieved person can file appeal against such assessment order of Bills of Entry. In the Service Tax matter, the assessee simply file the ST-3 return and no order is passed by the departmental officer which can be challenged by way of filing appeal before the Commissioner (Appeals). The appeal provision of the Service Tax matter is provided under Section 85 of the Finance Act, 1994 which is reproduced below :

> **Appeals to the Commissioner of Central Excise (Appeals).**
> **85.** (1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).

4.7 As per the plain reading of the above Section 85(1), it provides for filing an appeal before the Commissioner (Appeals) only in case an order is passed by an officer below the rank of Principal Commissioner or Commissioner of Central Excise. In the case of self-assessment of Service Tax, there is no order of assessment passed by any officer below the rank of Principal Commissioner or Commissioner of Central Excise. Therefore, there is no provision corresponding to Section 47(2) of Customs Act, 1962 in the Finance Act, 1994. Therefore, there is a clear distinction between the assessment under Customs and Service tax. Therefore, ratio of *ITC Ltd.* case cannot be applied in the matter of Service Tax. We have also noticed that Hon'ble Supreme Court in the *ITC* case also considered the case of Central Excise duty where the assessments were provisional. In that case, final assessment order was also passed. The assessee paid the amount so demanded. The assessee not being aware of the particular benefit of notification at the time of finalisation of assessment does not claim it. He did not appeal against a speaking order finalising provisional assessment and the assessee filed refund claim under Section 11B of Central Excise Act, 1944 in respect of duty so paid. It is that refund claim which was rejected by the Supreme Court as not maintainable without challenging the order of final assessment. In these peculiar facts of the case, the Hon'ble Supreme Court has observed that instead of filing the refund claim, the proper remedy was to file the appeal. However, in the present case, there is no order of final assessment by the Service Tax authorities. Therefore, the reliance cannot be placed on case of *ITC* (supra)."

6.7 It is observed that the Hon'ble Tribunal had, in their Judgment dated 27.04.2021, held that in the case of self assessment, there is no order of assessment passed by any officer below the rank of Principal Commissioner or Commissioner of Central Excise for filing appeal under Section 85 of the Finance Act, 1994. Therefore, the only recourse available in such cases is by way of filing of refund claim. Accordingly, the filing of refund claim by the appellant, in the instant case, in respect of the self assessed service tax paid by them tantamounts to their seeking re-assessment of their self assessed service tax. However, the eligibility of the appellant to refund was subject to determination/assessment of whether they were liable to pay service tax or otherwise. As discussed hereinabove, the issue has attained finality

consequent to the Hon'ble Tribunal holding that the appellant were not liable to service tax and the order of the Hon'ble Tribunal was upheld by the Hon'ble High Court of Gujarat. Considering the factual matrix of the case in its totality, it is evident that the re-assessment of the services provided by the appellant was finally concluded only upon the judgment dated 27.04.2021 of the Hon'ble Tribunal holding that the appellant were not liable to pay service tax. The consequential refund of the service tax paid by the appellant emanates from the judgment dated 27.04.2021 of the Hon'ble Tribunal.

6.8 At this juncture, it would be fruitful to refer to the definition of relevant date under Explanation (B)(ec) to Section 11B of the Central Excise Act, 1944, the text of which is reproduced below :

> "in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or Court, the date of such judgment, decree, order or direction;"

6.9 In the present case the appellant became eligible to refund of the service tax paid by them as a consequence of the judgment dated 27.04.2021 of the Hon'ble Tribunal. Therefore, the relevant date in terms of Explanation (B) (ec) to Section 11B of the Central Excise Act, 1944 is 27.04.2021.

6.10 Interest on delayed refunds is granted in terms of Section 11BB of the Central Excise Act, 1944, the text of which is reproduced below :

> "If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below fiver per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:
>
> Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 received the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.
>
> Explanation : Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Deputy Commissioner

of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."

6.11 In view of the above provisions under Section 11BB of the Central Excise Act, 1944, in particular the Explanation to the said Section, the appellant are eligible to interest upon expiry of three months from the date of the judgment of the Hon'ble Tribunal holding that the appellant are not liable to pay service tax and are eligible for consequential relief. The appellant has been sanctioned refund on 29.11.2022 and also sanctioned interest upon expiry of three months from 05.04.2022. However, considering the discussions hereinabove, I am of the considered view that the appellant are entitled to interest from 28.07.2021 i.e. three months from the date of judgment 27.04.2021.

7. The appellant have in their appeal memorandum relied upon various judgments of the Appellate Courts in support of their contention that they are eligible for interest from the expiry of three months from the date of application of refund till the date of sanction of the refund. I have perused the judgments relied upon by the appellant and find that the facts and circumstances involved in the present appeal are distinct from those in the cases relied upon by the appellant. In the case of Ranbaxy Laboratories Ltd. Vs. UOI – 2011 (273) ELT 3 (SC), the case before the Hon'ble Supreme Court was delay in sanction of rebate. However, in the instant case, the refund claimed by the appellant is not of rebate and neither is it arising out of any beneficial exemption notification or beneficial incentive scheme of the Government. As discussed in detail hereinabove, the refund claimed by the appellant is in respect of the service tax self assessed and paid. The taxability of the service provided by the appellant was a subject matter of dispute which was settled in favour of the appellant by the Hon'ble Tribunal, Ahmedabad by allowing the appeal of the appellant along with consequential relief. On the other hand, the cases relied upon by the appellant did not involve any issue of taxability and refund consequent to the determination of taxability. Consequently, I find that the judgments

relied upon by the appellant are not applicable in the facts and circumstances of the present case.

8. In view of the facts discussed hereinabove, the appeal filed by the appellant is allowed to the extent that they are eligible for interest from 28.07.2021, i.e., three months from the date of judgment dated 27.04.2021 of the Hon'ble Tribunal, Ahmedabad, till 29.11.2022, the date on which the refund was sanctioned to them.

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

The appeal filed by the appellant stands disposed of in above terms.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 11.05.2023.

Attested:

(N.Suryanarayanan. Iyer)
Assistant Commissioner (In situ),
CGST Appeals, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Zydus Lifesciences Ltd., — Appellant
Zydus Corporate Park,
Scheme No.63, Survey No. 536,
Khoraj (Gandhinagar),
Near Vaishnodevi Circle,
S.G. Highway,
Ahmedabad – 382 481

The Assistant Commissioner, — Respondent
CGST, Division- VII,
Commissionerate : Ahmedabad South.

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
4. Guard File.
5. P.A. File.