

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क  
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,  
आंबावाडी, अहमदाबाद- 380015.

क फाइल संख्या : File No : V2(ST)135 /A-II/2015-16 / 1286 to 1290  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-059 -16-17  
दिनांक Date : 03.08.2016 जारी करने की तारीख Date of Issue 09/08/16

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग \_\_\_\_\_ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं  
\_\_\_\_\_ दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original No SD-04/Ref-20/20/AK/2015-16 Dated 23.11.2015

Issued by Assistant Commissioner, Div-IV, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants

M/s. Zydus Hospira Oncology Pvt Ltd Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.



*U. Shanker*

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(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धारा (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क/ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (उसमें से प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड/ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।

(iii) The appeal under sub section and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 & (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Central Board of Excise & Customs / Commissioner or Dy. Commissioner of Central Excise to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjuration authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

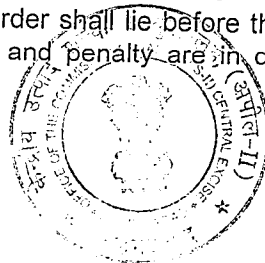
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(4)(i) इस संदर्भ में, 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।

(4)(i) 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 order arises on account of an appeal filed by M/s Zydus Hospira Oncology Pvt. Ltd, Plot No-3, SEZ, Pharmez, Sarkhej- Bavla Road, Ahmedabad,-382213 (hereinafter referred to as "the Appellant" for the sake of brevity) against Order-in-Original No.SD-04/REF-20/AK /2015-16 Dated 23.11.2015 (hereinafter referred to as the "impugned order" for the sake of brevity) passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (hereinafter referred to as the "Adjudicating Authority" for the sake of brevity) .

2. Briefly stated the facts of the case are that the appellant is registered with the Service Tax Department and holding Service Tax Registration No. AAACZ 2327 ST001. They had filed the refund claim of Rs.1,87,190/- on 24.03.2015 in terms of Notification No.12/2013-ST dated 01.07.2013 (herein after referred to as 'the said notification' for sake of brevity) in respect of specified service used in SEZ

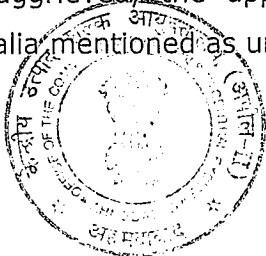
3. A show cause notice dated 09.06.2015 was issued to the appellant as to why the refund claim to the extent of Rs. 59058/- should not be rejected on 22 invoices raised by Bank of Baroda as the invoices were not as per rule 4A (ii), (iii) & (iv). Said invoices did not bear the service tax registration No. of service provider, description of service , value of taxable service and service tax payable thereon. Rs. 59058/- was paid towards "EEFC Conversion" banking charges.

4. The Adjudicating Authority rejected the refund claim of Rs. Rs. 59058/- under the impugned order in terms of the provisions of the said Rule 4A and notification read with Section 11B of the Central Excise Act,1944 as made applicable to the service tax matter vide Section 83 of the Finance Act,1994 on the grounds mentioned in SCN. Adjudicating Authority in para 8.1 of impugned OIO has observed that -

(i) "EEFC Conversion" charges mentioned in bank advice can be treated as "service Tax" in absence of specific mention of it as "service tax".

(ii) service tax registration No. of service provider, description of service , value of taxable service and service tax payable thereon should have been mentioned on invoices. Therefore were not as per rule 4A (ii), (iii) & (iv). Rule 4A exempts bank from providing Sr. No. and address of Service receiver

5. Being aggrieved, the appellant filed the appeal on 10.02.2016 on the grounds interalia mentioned as under:



*[Handwritten signature]*

(i). "EEFC Conversion" i.e. Banking service is already included in the list of eligible Taxable service, Approved by the Development Commissioner. Appellant produced the copy of Letter.F. No. D.12/19/2013- SEZ , GOI, Ministry of Commerce, SEZ Division dated 09.07.2014.

(ii) Rule 4A is not applicable when service provider is banking or financial company.

(iii) Appellant produced the Bank of Baroda's letter No. ASH/FEX/2016 dated 04.01.2016 wherein it is certified that Rs. 59,058/- collected is for service tax portion only on conversion charges charged by bank. Bank address with service tax code No. is given and invoice date is given in advice list attached to letter.

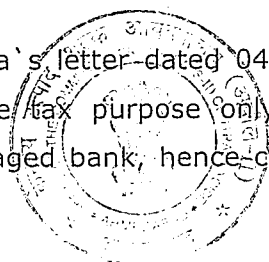
6. Personal hearing was granted on 27.07..2016, wherein Shri Rajesh Chhatrala, Dy. General Manager, SEZ on behalf of the appellant and reiterated the grounds of appeal memorandum.

7. I have carefully gone through the facts of the case on records, grounds of the appeal memorandum, Bank of Baroda letter, Ministry of Commerce, SEZ Division dated 09.07.2014. and oral submissions made by the appellant at the time of personal hearing.

8. The issue involved in the present case for decision is whether or not refund claim filed by the SEZ unit of the appellant is eligible for the refund of service tax paid on conversion charges to bank in as much as invoices produced do not show details such as type, value and nature of service , provider name and Service tax No. and amount of tax collected.

9. Exchange earners' foreign currency account (EEFC) is an account maintained in foreign currency with an authorised dealer i.e. a bank dealing in foreign exchange. It is a facility provided to the foreign exchange earners, including exporters, to credit 100% of their foreign exchange earnings to the account, so that the account holders do not have to convert foreign exchange into rupees and vice versa, thereby minimizing the transaction costs. I hold that EEFC Convergence charges are banking charges collected in relation to "service rendered". I find from Ministry of Commerce, SEZ Division dated 09.07.2014 that banking service is eligible service for SEZ hence refund is eligible vide said notification.

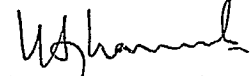
10. I find from Bank of Baroda's letter dated 04.01.2016 that charges of Rs. 59,058/- collected are for service tax purpose only. Bank of Baroda is a well organized and professionally managed bank, hence certificate with respect to said



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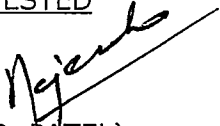
22 invoices cannot be ignored. Letter shows STC No. and complete address of bank for each advice/invoice. With this letter substantial requirement for allowing refund is satisfied.

11. In view of my above findings, the appeal filed by the appellant is allowed. The appeal filed by the appellant thus stands disposed off in above terms.



(UMA SHANKER)  
COMMISSIONER (APPEALS-II)  
CENTRAL EXCISE, AHMEDABAD

ATTESTED



(R.R. PATEL)  
SUPERINTENDENT (APPEALS-II),  
CENTRAL EXCISE, AHMEDABAD.

By R.P.A.D.:

M/s Zydus Hospira Oncology Pvt. Ltd,  
Plot No-3, SEZ, Pharmez,  
Sarkhej- Bavla Road, Ahmedabad, -382213

Copy To:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
  - 2) The Commissioner, Service Tax, Ahmedabad.
  - 3) The Deputy Commissioner, Service Tax, Division-VI, Ahmedabad.
  - 5) The Assistant Commissioner (Systems), Service Tax(HQ), Ahmedabad.
  - 6) The P.A. to Commissioner (Appeals-IV), Central Excise, Ahmedabad.
- 7) Guard File.



