

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)47/A-II/2016-17 / 1437 जो 144
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-076-16-17
दिनांक Date : 12.08.2016 जारी करने की तारीख Date of Issue 26/08/16

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-26/AK/2015-16 Dated 14.03.2016
Issued by Assistant Commr STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Amneal Life Science 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, मेधाणी 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.



G. J. K.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (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 (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219K केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form 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 (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. / Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) 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 adjudication 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 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 हैं -

- (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,

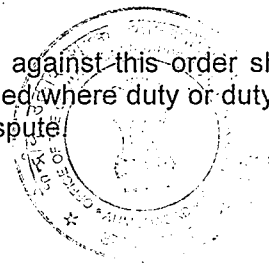
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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(1) 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(1) 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.



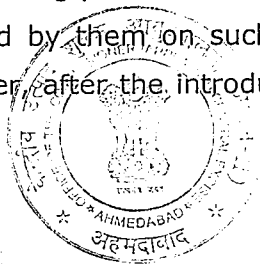
ORDER IN APPEAL

M/s. Amneal Life Sciences Pvt. Ltd., Plot No.15, 16 & 17, Pharmez, Special Economic Zone, Sarkhej-Bavla National Highway No.8A, Village Matoda, Tal. Sanand, District Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number SD-04/Ref-41/AK/2015-16 dated 14.03.2016 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-IV, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellants are a unit in Special Economic Zone, engaged in the manufacture of pharmaceutical products and is holding service tax registration no. AAGCA9685CSD001. The appellants are a functional unit under Pharmez, Sarkhej Bavla National Highway No. 8A, Village Matoda, Tal. Sanand, District Ahmedabad and are registered with Office of the Development Commissioner, KASEZ, Ministry of Commerce, Ahmedabad.

3. The appellants had filed a refund claim amounting to ₹5,55,828/- on 16.09.2015 under Notification Number 12/2013-ST dated 01.07.2013 for the period January 2015 to March 2015 with the Assistant Commissioner of Service Tax, Division-IV, Ahmedabad. On scrutiny of the refund claim, some discrepancies were noticed in the refund claim and accordingly a query memo dated 05.11.2015 was issued to them. The appellants, vide letter dated 23.01.2016, submitted their reply along with supporting documents. Finally, the adjudicating authority, vide the impugned order, rejected an amount of ₹3,98,642/- out of total refund claim of ₹5,55,828/- on the ground that the service categories of 'Management Consultant Services and Business Auxiliary Services' were not found in the exempted list of services.

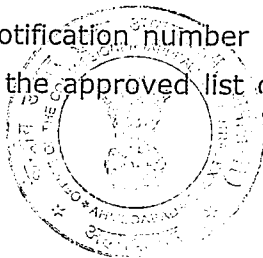
4. Being aggrieved with the impugned orders the appellants have preferred the present appeals. Regarding the rejected amount, stated the appellants, the only ground of the adjudicating authority is that the 'Management Consultant Services' and 'Business Auxiliary Services' were not found in the exempted list of services. The appellants argued that they have been claiming exemption from payment of Service Tax on various taxable services including 'Management Consultant Services' from inception till 18.11.2013. They have enclosed the copies of list of taxable services approved by the Development Commissioner, Kandla Special Economic Zone vide letters dated 05.07.2010 and 18.01.2012. In both the lists, the 'Management Consultant Services' had been approved. During these periods, the appellants were allowed to either claim *ab-initio* exemption from payment of Service Tax by following procedures of Form A-1 and A-2 or claim exemption of Service Tax paid by them on such taxable services used for authorized operations. However, after the introduction of Notification number 12/2013-



ST dated 01.07.2013, the appellants had approached the Development Commissioner, Kandla Special Economic Zone for obtaining approval list of taxable services being used/ proposed to be used by them for authorized operation. The Development Commissioner, Kandla Special Economic Zone had referred their application to Unit Approval Committee. The said Unit Approval Committee revised the list of taxable services vide letter dated 19.11.2013 and reduced the list of taxable services from 91 to 60 by superseding all the earlier list of taxable services approved by them. Accordingly, The Ministry of Commerce & Industry, Department of Commerce issued the revised list excluding 'Management Consultant Services' and 'Business Auxiliary Services'. The appellants pleaded that they have paid Service Tax to the service provider and claimed the refund which should be allowed to them irrespective of whether such service is included in the list of taxable service approved by the Development Commissioner/ Unit Approval Committee or otherwise. Further, the appellants informed that vide letter dated 23.03.2016, the Development Commissioner, Kandla Special Economic Zone approved all the 93 authorized services and hence requested to sanction the refund claim. They further added that the Service Tax authority cannot raise any right to retain such money with the Government where such tax was not payable by the appellants.

5. Personal hearing in the matter was granted and held on 05.07.2016 wherein Shri Pratik R. Mehta, Manager Corporate Affairs, appeared before me and reiterated the contents of appeal memo.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I find that the adjudicating authority has rejected the refund claims on the ground that the service categories of 'Management Consultant Services and Business Auxiliary Services' were not found in the list of approved services for authorized operation. In the Notification number 12/2013-ST dated 01.07.2013 it is mentioned that "*for the purpose of claiming exemption, the Developer or Unit of SEZ shall obtain a list of taxable services as are required for the authorized operations (referred to as the 'specified services' elsewhere in the notification) approved by the Approval Committee of the concerned SEZ*". The adjudicating authority has mentioned that the service of 'Management Consultant Services and Business Auxiliary Services' are not included in the list of the approved service produced by the appellants at the time of filing the refund claim. Since, the service utilized is not included in the list of the approved service; the refund of Service Tax on this invoice is not admissible. I find that for claiming refund under Notification number 12/2013-ST dated 01.07.2013, inclusion of the service in the approved list of the services for



the authorized operation is a mandatory condition. The contents of paragraph 3 of the said notification are pasted below;

(3) The procedure for claiming exemption from levy of service tax by the service provider to SEZ unit/developer is as follows:

a) The list of services used in the authorized operations should be approved by the Approval Committee of the department.

b) SEZ unit / developer should apply in Form A-1 a declaration along with the approval list of services to the jurisdictional Division Office.

c) The Division Office based on Form A-1 declaration authorizes SEZ unit/developer in Form A-2 to procure services without payment of service tax.

d) A quarterly return in Form A-3 is required to be filed by such SEZ unit/developer with the Range office.

e) In case if the SEZ unit /developer fails to use the listed approved services procured without payment of service tax for authorized operations, they need to pay to the government the service tax to the extent of exemption claimed along with interest.

Hence, as per the above clause, the refund claim is not admissible as Management Consultant Services and Business Auxiliary Services being not approved by the UAC at the relevant time. However, along with the appeal memorandum, the appellants have submitted a letter of approval issued from file number KASEZ/DCO/II/03/2009-10 dated 23.03.2016 from the Jt. Development Commissioner (i/c), Kandla Special Economic Zone, Ahmedabad. Vide the said letter, concerned authority specifically approves the entire list of 93 authorized services and the same is valid with retrospective affect. The content of the said letter is reproduced as below;

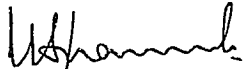
".....The Competent Authority (Approval Committee of Zydus-sector specific-pharma-SEZ) in its 16th meeting held on 17-11-2011 had already approved a default list of 93 specific services which is enclosed herewith, as required by the applicable CBEC Notification in force from time-to-time.

Further, the Approval Committee for Zydus-Pharmaceuticals-SEZ in its 34th meeting held on 10-03-2016 has clarified that the said list of '93' authorized services already approved on 17-11-2011 is deemed to be valid all along and will continue till any other decision taken by the Approval Committee".




The above letter is very clear that the Approval Committee had approved the said list of 93 specified services on 17.11.2011 and is treated to be valid all along (i.e. from the date of its approval) till any other decision is taken. In view of the above, as per sub-rule (3)(a) of the Notification number 12/2013-ST dated 01.07.2013, the appellants are eligible for refund of ₹ 3,98,642/- which was rejected by the adjudicating authority vide the impugned order.

7. In view of above, I set aside the impugned orders to the rejection part of the refund only and allow the appeals filed by the appellants.


(UMA SHANKER)

COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA) 22/07/16
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,
M/s. Amneal Life Sciences Pvt. Ltd.,
Plot No.15, 16 & 17, Pharmez, Special Economic Zone,
Sarkhej-Bavla National Highway No.8A,
Village Matoda, Tal. Sanand,
District-Ahmedabad 382 213

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax, Ahmedabad.
- 3) The Dy./Asst. Commissioner, Service Tax, Division-IV, Ahmedabad.
- 4) The Asst. Commissioner(System), Service Tax Hq, Ahmedabad.
- 5) Guard File.
- 6) P.A. File.

