

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)52/A-II/2016-17 / 1432 to 1436  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-077-16-17  
दिनांक Date : 17.08.2016 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-02/Ref-304/DRM/2015-16 Dated 31.03.2016

Issued by Assistant Commr STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. Torrent Pharmacuetical 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:-

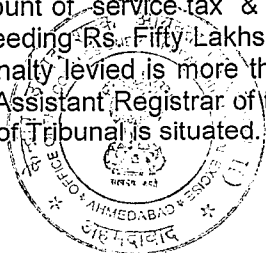
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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.



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(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 24) 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, बशर्त 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 बशर्तें यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी 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,

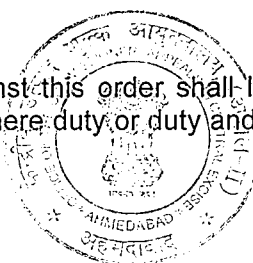
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



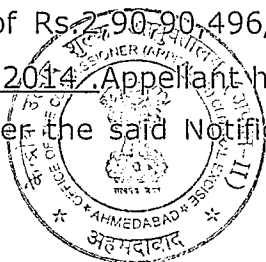
ORDER IN APPEAL

This order arises out of the appeal filed by M/s Torrent Pharmaceuticals Ltd, Torrent House, Off Ashram Road, Navrangpura, Ahmedabad 380009 (hereinafter referred to as 'the appellant') against the OIO SD-02/REF-304/DRM/2015-16 F.No.SD-02/Ref-163/13-14 dated 31.3.2016 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Service Tax, Division II, Ahmedabad (hereinafter referred to as 'the sanctioning authority') on 31.3.2016.

2.1 The appellant has filed a refund claim for accumulated credit of Rs. 2,67,80,000/- under Notification No. 27/2012-CE (NT) dated 18.06.2012 (hereinafter referred to as the 'said Notification') for the period January 2013 to March 2013 on 3.9.2013. Similarly, the appellant had also filed claim on 3.1.2014 for the refund claim for wrong Service Tax payment of Rs. 2,90,90,496/-. Claim for Rs. 2,90,90,496 on the compensation amount paid by them to their foreign subsidiary marked as Torrent Pharmaceuticals GMBH (hereinafter referred to 'as TPG') in the capacity of Service Recipient under Section 68(2) of the Finance Act, 1994. Both the claims were scrutinized for its admissibility and the two Showcause notices, proposing the rejection of the refund claims were issued, which are as follows,

2.2. Refund claim of Rs. 2,67,80,000/- :- Showcause Notice No. SD-02/REF-91/13-14 dated 27.9.2013. The Show cause notice proposes rejection on the counts that as to how the compensation paid to TPG cannot be held as export of services inasmuch as how would the provisions of the said Notification would stand applied; that the appellant has been providing taxable services in India and in that case the appellant had failed to establish and provide any specific reason as to why they were not in a position to utilize the Cenvat Credit; that the appellant had been providing Business Support Services to their subsidiaries overseas but has failed to provide any evidence to justify this fact; that the appellant has paid the Service Tax as a service recipient under the reverse charge mechanism and in such circumstances how the same can be treated as Export of Services; that there is no foreign inward remittances to support the exports as claimed by the appellant.

2.3 Refund claim of Rs. 2,90,90,496/-. Showcause Notice No. SD-02/REF-163/13-14 dated 15.1.2014. Appellant has already preferred a refund claim for Rs. 2,67,80,000/- under the said Notification on the same issue covering the



②

same period and same set of transactions; that the appellant has failed to provide any justification and authority for filing the claim again on 3.1.2014 as in fact they had already applied for the refund claim on 3.9.2013 and as such the appellant had failed to furnish proper authority and ground for filling the said refund claim twice.

3. Both the above show cause notices were adjudicated vide OIO F.No.SD-02/Ref-202/2013-14 dated 31.3.2014 wherein the adjudicating authority rejected the claim of the appellant.

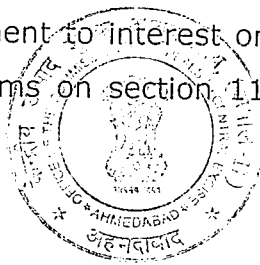
4. Aggrieved by the impugned order, the appellant has filed an appeal to Commissioner Appeal on various grounds. Commissioner Appeal vide OIA No. AHM-SVTAX-000-APP-274-13-14 dated 13.12.13 remanded back the case as under-

*"I thereby, remand back this part of the appeal to the original adjudicating authority, to decide the refund in light of the observations brought by way of my findings above in case of refund claim of Rs. 2,67,80,000/-. As regards the appeal for refund of Service Tax paid on the compensation amount of Rs. 2,90,90,496/-, the same stands rejected, as the Service Tax so paid appears to be within the framework of law."*

4.1 Appellant in their ground of appeal has stated that " That portion of aforesaid OIA wherein refund of Rs. 2,90,90,496 was rejected By Ld. Commissioner (Appeal), The Aappellants preferred an appeal before the Hon'ble CESTAT on various grounds. The appeal is currently pending for hearing"

5. In remand proceedings , The Asst. Commissioner Service Tax, Div-II vide impugned order F.No.SD-02/Ref-304/2015-16 dated 31.3.2016 sanctioned the refund under section 11B of service tax of Rs. 2,67,80,000/- but no interest of delayed refund was granted.

6. Appellant had filed appeal in Commissioner appeal on 09.05.2016 wherein they stated that the application of refund for Rs. 2,67,80,000/- was filed on 03.09.2013 and they are entitlement to interest on refund from three months from dated of filing refund in terms on section 11B of CEA 1944. They have relied upon following judgments-



*[Handwritten signature]*

Ranbaxy Laboratories Vs. Union of India, 2011(273)ELT.3.(SC)

Siddhant Chemicals Vs. UOI 2014 (304) ELT 44 (All)

7. Appellant also relied upon CBEC circular No. 670/61/2002-cx dated 01.10.2002 wherein instruction is issued to departmental officers to scrupulously follow the interest liability provisions where refund is not sanctioned within prescribed time.

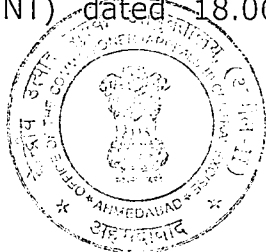
08. Personal Hearing in the matter was held on 30.06.2016, wherein Ms. Madhu Jain, Advocate and Mr. Tejas Shah appeared on behalf of the appellant and reiterated the contents of the appeal memorandum in both the appeals V2(ST)108 , 109 (2V2(ST)52/A-II/2016-17) being similar in nature..

09. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and oral submissions made by the appellant at the time of personal hearing.

10. I find that in the case before me the appeal has been filed on 08.05.2016 after receipt of the impugned order on 31.03.2016 by the appellant. As per the provisions of Section-85 (3) of the Finance Act, 1994 as amended vide the Finance Act, 2012 made effective from 28.05.2012, an appeal was required to be presented before the Commissioner, Central Excise (Appeals) within two months from the date of receipt of the impugned order. I find that the appeal is filed within time.

11. The appellant with this present appeal against the impugned order has pleaded for the interest under the provisions of Section 11BB of the Central Excise Act, 1944.

12. The moot point for decision before me is that whether the appellant is eligible for the interest under the provisions of Section 11BB of the Central Excise Act,. I find that initially refund claim was filed in terms of Notification No. 27/2012-CE (NT) dated 18.06.2012 on 03.09.2013 in respect of



accumulated input Service Tax credit of Rs.2,67,80,000/- for the period Jan 2013 to March 2013.

13. Original refund claim of Rs.2,67,80,000/- was initially rejected but later on sanctioned in remand proceedings vide impugned order dated 31.03.2016 but no interest was sanctioned.

14. I find that payment of interest on sanctioning of refund beyond three months from the date of receipt of the application of refund claim till the date of refund of such duty is governed by the provisions of Section 11BB of the Central Excise Act, 1944 made applicable to the service tax cases vide Section 83 of the Finance Act, 1994. Section 11BB ibid is reproduced as under for better appreciation of the issue in appeal.

*"SECTION [Interest on delayed refunds. 11BB. — 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 five 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"*

15. Further, payment of interest on sanctioning of refund beyond three months from the date of receipt of the application of refund claim till the date of refund of such duty is a settled issue in pursuance to the various judgments passed by the higher judicial forums as well as being clarified by the CBEC also from time to time. The CBEC vide Circular No.670/61/2002-CX dated 01.10.2002 being relevant in this case, is interalia reproduced as under.

*"In this connection, Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest."*



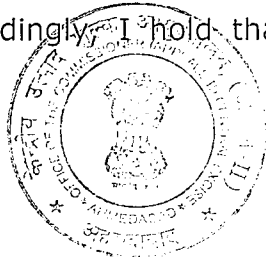
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16. Section 11-BB of the Act makes provision for payment of interest from the date immediately after expiry of three months from the date of receipt of the application under sub-section (1) of that section, till the date of refund of such duty at such rate as may be fixed by the Central Government by notification in the Official Gazette subject to the minimum and maximum limits specified there under, if any duty ordered to be refunded under sub-section (2) of Section 11-B to any applicant is not refunded within three months from the date of receipt of such application. Thus, section 11BB of the Act would be attracted in case where there is delay in refunding the amount of duty ordered to be refunded under sub-section (2) of section 11B of the Act. Refund under Rule 5 of the Rules also being a refund under sub-section (2) of Section 11B of the Act would therefore, squarely fall within the ambit of Section 11BB of the Act and interest would be payable under Section 11BB of the Act in case of delay in sanctioning refund under Rule 5 of the Rules.

17. Further, I find that the issue in question is also decided by the higher judicial forums in the following judgments, wherein it is held that the interest should be paid from the expiry of three months from the date of receipt of refund application.

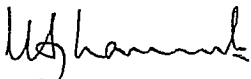
- J.K.cement Works V/s ACC- 2004(170) ELT 4 (Raj. H.C.)- Also maintained by S.C.-2005 (179) ELT A150 (S.C.)
- Kerala Chemicals & Protines Ltd.- 2007 (211) ELT 259- (Tri. Bang.)
- CEX,Pune-III V/s Movilex Irrigation Ltd.-2007 (207) ELT 617 (Tri. Mumbai)
- CCE V/s Reliance industries Ltd- 2010(259)ELT 356 (Guj HC)
- Ranbaxy Laboratories Vs. Union of India, 2011(273)ELT.3.(SC)

18. In view of above, I find force in the contention of the appellant and also reliance placed by the appellant in appeal, on various decisions/judgments of the higher judicial forums and the CBEC circulars issued in this regard being relevant to the issue, also support the contention of the appellant. Accordingly, I hold that the appellant is eligible of the



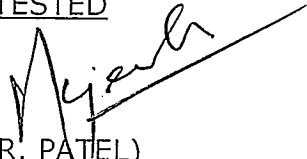
interest at such rate for the time being fixed by the Central Government by Notification in the Official Gazette on such refund amount from the date immediately after the expiry of three months from the date of such application of refund till the date of refund of such service tax. However, I find that Appellant vide letter dated 21.10.2013 had informed adjudicating authority that they will file SCN reply by 02.11.2013 but filed on 02.12.2013. I hold that 35 days delay occurred in filing reply on part of appellant is not entitled for interest.

19. The appeal filed by the appellant is thereby 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 Torrent Pharmaceuticals Ltd,  
Torrent House,  
Off Ashram Road,  
Navrangpura,  
Ahmedabad. 380009

Copy To:

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

