


<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN: 20240264WT0000111AAD

फा.सं./F.No. STC/4-109/O&A/2015-16

आदेश की तारीख/Date of Order :- 29.02.2024

जारी करने की तारीख/Date of Issue :- 29.02.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 87/ADC/LD/2023-24

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद - 380015 को प्रारूप संख्या एस टी -4 (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner (Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -4 (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

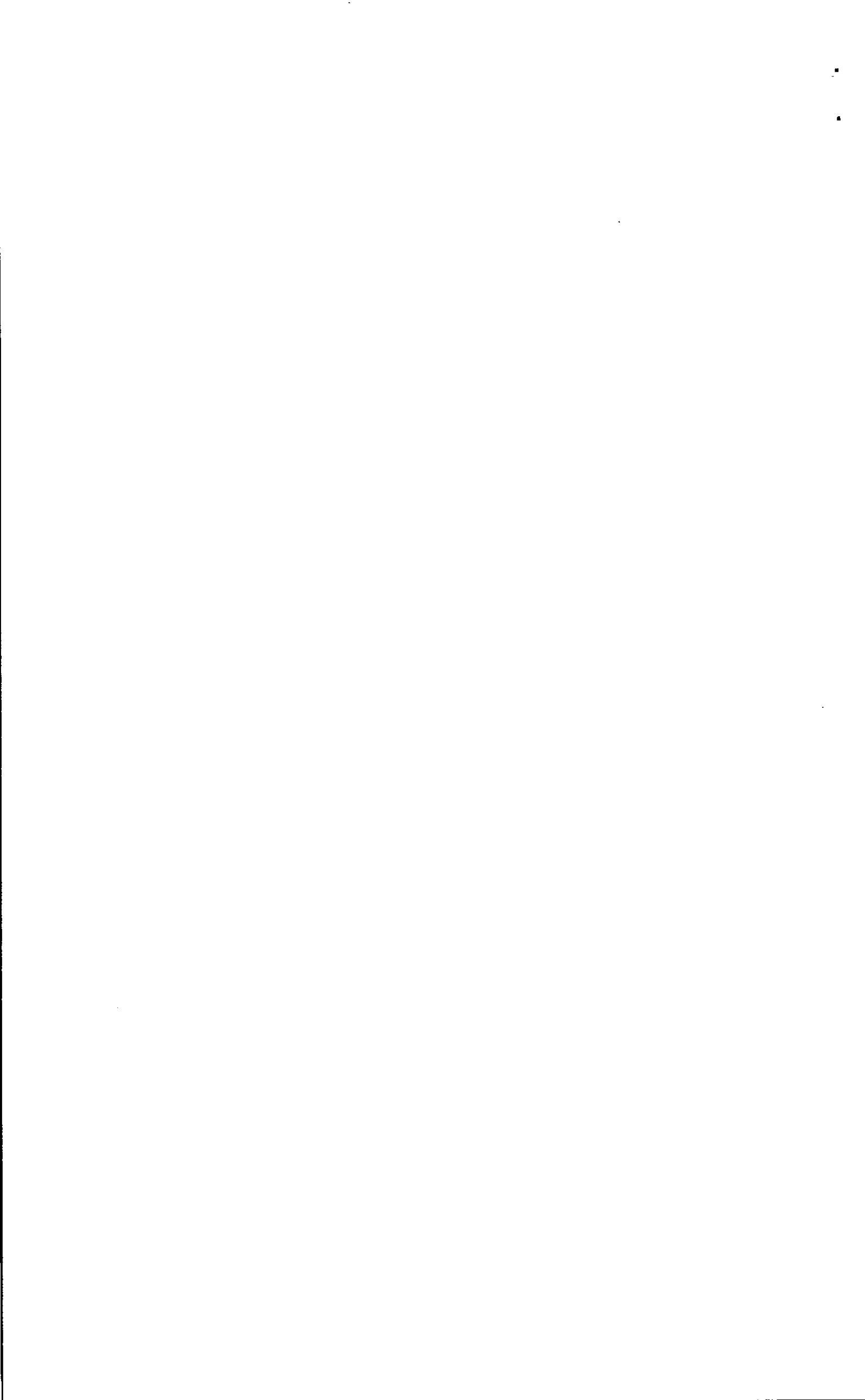
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिस पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -4 (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना / Proceedings initiated against Show Cause Notices F. No. STC/04-109/O&A/15-16 dated 12.08.2016 issued to M/s. ZyduS Technologies Ltd.; Plot No. 1B, Pharmez (ZyduS), Sarkhej-Bavla National Highway No. 8A, Village - Matoda, Tal - Sanand, District - Ahmedabad.



BRIEF FACTS OF THE CASE:

M/s. Zydus Technologies Ltd.,(Now known as Zydus Lifesciences Limited) Plot No. 1B, Pharmez (Zydus), Sarkhej-Bavla National Highway No. 8A, Village: Matoda, Tal. Sanand, District: Ahmedabad (the claimant/the said assessee) were registered with Service Tax Department having Service Tax Registration No. AAACZ3680QSD002.

2. The claimant is a functional unit under Pharmez and is registered with Office of the Development Commissioner, KASEZ, Ministry of Commerce, Gandhidham. The Development Commissioner, Kandla Special Economic Zone (KASEZ), Ministry of Commerce and Industry, Ahmedabad, under letter No. KASEZ/DCO/Pharmez/II/01/2009-10 dated 29.06.2009 had permitted for setting up a unit to the claimant. The said approval letter was valid for a period of one year from the date of issue. The claimant also submitted the copy of approval list of taxable services issued by the Development Commissioner, KASEZ, Ahmedabad.

3. The claimant had filed a refund claim of Rs.53,63,640/- under Notification No. 17/2011-ST dated 01.03.2011 for the period 01.07.2011 to 31.12.2011 on 07.03.2012. On scrutiny of the refund claim, various discrepancies were found. Therefore, show causes notice No. SD-02/Ref-90/11-12 dated 01.06.2012 was issued to the claimant. The original adjudicating authority viz. The Assistant Commissioner, Division II, Service Tax, Ahmedabad, rejected the entire refund on various grounds, vide OIO No. SD-02/Ref-60/RRB/12-13 dated 12.10.2012. Being aggrieved with the above said OIO, the said claimant filed the appeal before the Commissioner (Appeals-IV), Ahmedabad. The Commissioner (A) has passed OIA No. AHM-SVTAX-OOO-APP-331-13-14 dated 28.01.2014. The Commissioner (A) has party allowed the refund and remanded the matter back with the following remarks.

"11.The appeal filed by the appellant is disposed off in term of my finding as elicited out at para No. 7 to 13"

4. In view of the said OIA of Commissioner [Appeal IV], the refund was fully sanctioned vide Order in Original No. SD-02/REF-04/NT/2015-16 dated 06.04.2015 by the Assistant Commissioner of Service Tax, Div II, Ahmedabad and was paid to the claimant vide Cheque No. 317145 dated 06.04.2015.

5. Further, subject Order-in-Appeal No. AHM-SVTAX-OOO-APP-331-13-14 dated 28.01.2014, passed by the Commissioner (Appeal-IV), Ahmedabad was examined by the Committee of Commissioners, comprising of Commissioner, Service Tax, Ahmedabad and Commissioner, Central Excise, Ahmedabad-III, constituted under the provisions of Section 86(2A) of The Finance Act, 1994 (32 of 1994) and it was observed that the said OIA was not proper and legal in as much as the Commissioner (A) had partially allowed the refund and had remanded the matter back to the adjudicating authority. Hence, the said OIA was not accepted by the department and an appeal bearing No ST/12039/2014 was filed before the Hon'ble Customs, Excise and Service Tax

Appellate Tribunal, West Zonal Bench, [CESTAT], Ahmedabad 29.05.2014 on the following grounds.

1. In some cases, the services were wholly consumed within SEZ and it was breach of the notification. Since the services were consumed by the claimant in relation to the authorised operation within the SEZ, the service provider or the claimant, on reverse charge mechanism were not required to pay service tax at all, though the claimant had paid service tax on such fully exempted services. Notification No. 9/2009-ST dated 03.03.2009 was amended vide Notification No. 15/2009-ST dated 20.05.2009. Clause (c) to proviso to para 1 of Notification No. 9/2009-ST dated 03.03.2009 was amended and new clause (c) was substituted, which is reproduced below:

“(c) the exemption claimed by the developer or units of Special Economic Zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone except for services consumed wholly within the Special Economic Zone;”

2 As per the above provision, the exemption is provided by way of refund of service tax paid on specified services, except for the services consumed wholly within the SEZ. In many cases, the claimant has claimed the refund of service tax paid on services, consumed wholly within the SEZ. As per the above notification, the claimant is not entitled for the refund of services consumed wholly within the SEZ. Relying on the decision of Tata Consultancy Services, Commissioner (A) has allowed the appeal by way of remand back. It is a well established law as pronounced by various judgments of Supreme Court that a notification has to be read strictly so far as the eligibility is concerned, condition stipulated therein cannot be ignored.

3 In case of some services viz. Legal Consultancy, Outdoor catering, manpower Recruitment and Supply Agency etc., the services were neither received for authorized operation of SEZ nor were specified services. Commissioner (A) has held that the services for which the claim is rejected are approved services. Commissioner (A) has remanded the matter back to pass a speaking order. The adjudicating authority in its order has categorically held that some services were neither received for authorized operation nor were the specified services. Therefore, the refund on such services is not admissible.

4 In some invoices, the address of the claimant was incomplete, not mentioned or mentioned the name other than the claimant. Commissioner (A), has, in some cases upheld the order and for remaining cases remanded the matter back to the adjudicating authority.

5 Commissioner (A) has remanded the matter back to the adjudicating authority to re-examine the issues and to pass a speaking order following the principles of natural justice.

5.1 Section 35(A) of the Central Excise Act, 1944/Section 128A (3) of the Customs Act, 1962 as it stood before 11.05.2001 read as “Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or

annulling decision or order appealed against or may refer the case back to the adjudicating authority with such direction as he may think fit for a fresh adjudication or decision as the case may be, after taking additional evidence, if necessary. The above underlined – bold phrase of the above referred section(s) was amended with effect from 11.05.2001. The new section read as “Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against”.

5.2 The said amendment with effect from 11.05.2001 withdrew the powers of remand which were vested with the Commissioner (Appeals). The said amendment was made in the Finance Act, 2001 by way of approval/assent given by the Parliament. Since then, the Commissioner (Appeals) has been authorized to act as an adjudicating authority and pass necessary orders if it is found that the original adjudicating authority has passed the order which is not legal and proper by calling for the adjudication proceedings’ record and re-examine the issue a fresh/suo moto. The Commissioner (Appeals) has been given powers to issue orders after ascertaining facts at his end which earlier were used to be done by the original adjudicating authority by way of remand directions.

5.3 The Hon’ble Supreme Court of India in its judgment dated 01.07.2007 in Civil Appeal No. 6988/2005 in the case of M/s. MIL India Ltd [2007 (210) ELT 188 (S.C.)] has noted the provisions of amended law by observing that “in fact, the power of remand by the Commissioner (Appeals) has been taken away by amending Section 35A with effect from 11.05.2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that Clause 122 seeks to amend Section 35A so as to withdraw the power of the Commissioner (Appeals) to remand matter back to the adjudicating authority for fresh consideration.”

5.4 The Hon’ble High Court of Punjab & Haryana in the case of M/s. Enkay (India) Rubber Co. Pvt. Ltd [2008 (224) ELT 393 (P & H)], M/s. B.C. Kataria [2008 (221) ELT 508 (P & H)] and M/s. Hawkins Cookers Ltd has held that the observations made by the Hon’ble Supreme Court in the above referred order in Civil Appeal No. 6988/2005 decided on 01.03.2007 are part of the ratio decidendi of the Apex Court’s judgment passed in case of M/s. MIL India Ltd.

5.5 All the above referred orders passed by Hon’ble High Court of Punjab & Haryana have been passed in 2007 and 2008 i.e. after passing of order in case of M/s. Medico Lab. by the Hon’ble Gujarat High Court on 21.09.2004. Even the Hon’ble Supreme Court’s judgment in case of M/s. MIL India Ltd dated 01.03.2007 has been passed after the order passed by Hon’ble Gujarat High Court. All these orders affirm the amendment made in the Finance Act, 2001 by the Parliament vide which remand back powers have been done away with.

5.6 While passing the present Order-in-Appeal by the Commissioner (Appeals-IV), Central Excise, Ahmedabad, the ratio decidendi of the above discussed judgments have been lost sight off and even the Appellate Commissioner, Central Excise, Ahmedabad has overlooked the Board’s Instruction No. 275/34/2006-CX. 8A dated 18th February, 2010 which was issued before passing the said Order-in-Appeal. The Commissioner (Appeals) has failed to follow the judicial discipline since the said authority was bound

to follow the judgments and Circular which prohibited Commissioner (Appeals) to remand the case to the original adjudicating authority. The above Circular has been overlooked by the Commissioner (Appeal). The above circular provided that the Commissioner (Appeals) should have examined the matter/issue by calling for the adjudication proceedings' record and pass appropriate order himself/herself, without remanding back the case. The said order could have been passed after ascertaining the facts of the case and the law point involved in it.

5.7 The Commissioner (Appeals) has failed to adhere to judicial discipline by directing the original adjudicating authority to decide the matter on its own. Having failed to do so, the order so passed by the Commissioner (Appeal) is against the settled law and Circular and hence needs to be set aside. The Apex Court and other Hon'ble High Courts have held that the Commissioner (Appeals) has got no powers to remand the case back to the original adjudicating authority after the amendment made in the relevant section with effect from 11.05.2001. The case laws of the years 2007 and 2008 by the Apex Court and Hon'ble High Court of Punjab & Haryana now prevail over the Hon'ble High Court of Gujarat's order dated 21.09.2004.

5.8 The provisions of Section 35A of Central Excise Act, 1944 are applicable for disposal of appeals in Service Tax matters in view of Section 85(5) of the Finance Act, 1994. In view of the settled proposition of law, the Commissioner (Appeals)'s Order-in-Appeal under reference here is bad in law and deserves to be set aside as it directs the original adjudicating authority to re-examine the issue and to pass speaking order, following the principles of natural justice. The same could have done by the Commissioner (Appeals) by calling for documents from the claimant to come to a fair and just conclusion by granting another opportunity to the claimant.

6 The Commissioner (Appeals) has committed gross error of law by remanding back the matter on the above grounds. The Commissioner (Appeals) has also erred in allowing the refund in some cases, though the claimant was not entitled for the refund. Therefore, in view of the above facts and reasons, the Order-In-Appeal No. AHM-SVTAX-OOO-APP-331-13-14 dated 28.01.2014 (received in this office on 30.01.2014), is not proper and legal and deserves to be set aside. Accordingly, the Committee of Commissioners, comprising of Commissioner, Service Tax, Ahmedabad and Commissioner, Central Excise, Ahmedabad-III decide to file appeal against the Order-in-Appeal No. AHM-SVTAX-OOO-APP-331-13-14 dated 28.01.2014, before Hon'ble CESTAT, West Zonal Branch, Ahmedabad.

7. Further, the Committee directs and authorizes the Assistant Commissioner, Division - II, Service Tax, Ahmedabad to file an appeal before the Hon'ble CESTAT, WZB, Ahmedabad against the Order-in-Appeal No. AHM-SVTAX-OOO-APP-331-13-14 dated 28.01.2014 (received in this office on 30.01.2014), passed by the Commissioner (Appeal-IV), Ahmedabad, in case of M/s. Zydus Technologies Ltd., Ahmedabad, arising out of Order-in-Original No. SD-02/Ref-60/2012-13 dated 12.10.2012, passed by the Assistant Commissioner, Division-II, Service Tax, Ahmedabad.

8 Accordingly, the Committee of Commissioners, comprising of Commissioner, Service Tax, Ahmedabad and Commissioner, Central Excise, Ahmedabad-III, decide to file appeal against the Order-in-Appeal No. AHM-

SVTAX-OOO-APP-331-13-14 dated 28.01.2014 (received in this office on 30.01.2014) before Hon'ble CESTAT, West Zonal Branch, Ahmedabad with following reliefs:

PRAYER

- (i) to set aside the Order-in-Appeal No. AHM-SVTAX-OOO-APP-331-13-14 dated 28.01.2014.
 (ii) to pass any other order(s) as deemed fit in the interest of justice.

6. Therefore, the grants of refund claim of Rs. 53, 63,640/- vide Order in Original No. SD-02/REF-04/NT/2015-16 dated 06.04.2015 in view of remand back vide Commissioner [Appeal IV]'s OIA No. AHM-SVTAX-OOO-APP-331-13-14 dated 28.01.2014 appeared to be erroneously sanctioned on the above discussed points and therefore appeared to be recoverable from M/s Zydus Technologies Limited under Section 73(1) of the Finance Act, 1994.

7. Accordingly, A Show Cause Notice No.- STC/04-109/O&A/15-16 DATED 12.08.2016 was issued by Principal Commissioner, Service Tax Ahmedabad to M/s Zydus Technologies Limited Plot No. 1B, Pharmez (Zydus), Sarkhej-Bavla National Highway No. 8A, Village: Matoda, Tal. Sanand, District: Ahmedabad as to why:-

(i) Refund of **Rs. 53,63,640/-** which was sanctioned vide the OIO as detailed above should not be treated as erroneous refund and the same should not be recovered from them under Section 73 (1) of the Finance Act, 1994.

(ii) Interest as applicable should not be recovered under the provision of Section 75 of the Finance Act 1994.

8. As department had filed an appeal bearing No ST/12039/2014 before the Hon'ble Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, [CESTAT], Ahmedabad 29.05.2014 against OIA No. AHM-SVTAX-OOO-APP-331-13-14 dated 28.01.2014, Show Cause Notice No.- STC-04/109/O&A/15-16 DATED 12.08.2016 was transferred in Call Book on 23.08.2016 in lieu of Circular No.- 719/35/2003 dated 28.05.2003 under category- 1 cases i.e. cases in which department has gone in appeal to the appropriate authority.

9. Further, Departmental Appeal No.- ST/12039/2014 was disposed off by CESTAT Ahmedabad vide Final Order No.- A/12257/2023 dated 11.10.2023. Subsequently, Show Cause Notice No. STC/04-109/O&A/15-16 DATED 12.08.2016 was retrieved from call book by the competent authority for adjudication purpose on 20.12.2023. Further, corrigendum dated 01.02.2024 as per Circular No. 1053/02/2017-CX dated 10.03.2017 was issued to SCN No.- STC/04-109/O&A/15-16 DATED 12.08.2016 by virtue which said Show Cause Notice made answerable to the Additional Commissioner of Central GST & Central Excise, Ahmedabad North.

PERSONNEL HEARING & DEFENCE REPLY :

10. The personnel hearing were granted to the said assessee on 30.01.2024 and 14.02.2024. Shri Rashmikant Shah & Amit Parmar authorised

representative of said assessee appeared on 14.02.2024. However, due to unforeseen circumstance, PH was not conducted on 14.02.2024. Further, said assessee vide letter dated 19.02.2024 has requested to not grant further date of personal hearing and decide the matter on basis of their defence reply.

11.1 M/s. Zydus Technologies Ltd (Now known as Zydus Lifesciences Limited) vide letter dated 19.02.2024 has requested to adjudicate the said case on the basis of defence reply dated 01.09.2020 and in light of the Final Order No.-A/12257/2023 dated 11.10.2023 passed by the CESTAT, Ahmedabad wherein revenue's appeal was dismissed. Further, they submitted that the department has not filed appeal against Appealable Order in Original No. SD-02/REF-04/NT/2015-16 dated 06.04.2015 and therefore the remedy was not issuance of Protective demand SCN dated 12.08.2026. Further, they submitted that M/s. Zydus Technologies Ltd had undergone a corporate merger with Zydus Lifesciences Limited as sanctioned by the NCLT, Ahmedabad vide order dated 19.03.2020. They also enclosed copy of the same.

11.2 The said assessee in their defence reply date 20.08.2020 has submitted that Refund of Rs.53,63,640/- cannot be called "erroneous Refund", as it was sanctioned vide Order-in-Original No. SD-02/REF04/NT/2015-16 dated 6.4.2015 as per Remand Directions, contained in Order-in-Appeal No. AHM-SVTAX-000-APP-331-13-14 dated 28.10.2014 passed by Commissioner (Appeal-IV), Ahmedabad. In other words, a Refund, which was granted by an Adjudication Order, will not become "erroneous Refund", on the ground that the Department filed an Appeal, against an Appealable Order dated 28.01.2014, based on which, the Adjudicating Authority, has sanctioned the said Refund. Therefore, terming the Refund, as "erroneous Refund", in the impugned Show Cause Notice dated 12.8.2016, itself is erroneously.

11.3 Further, they submitted that the Honourable Supreme Court in the case of PRIYA BLUE INDUSTRIES LTD. V/s COMMISSIONER OF CUSTOMS (PREVENTIVE) reported in [2004 (172) E.L.T. 145 (SC) has held that once an Assessment Order is passed, the duty would be payable, as per that Order. Unless that Order has been reviewed under Section 28 and/or modified in an Appeal that Order stands, So long as the Assessment Order stands, the duty would be payable as per that Order. Applying the same Ratio, the Order-in-Original No., SD-02/REF04/NT/2015-16 dated 6.4.2015 under which the impugned Refund was sanctioned, was not reviewed/modified in Appeal and therefore, the same, attained finality.

11.4 The Honourable Supreme Court, in the case of COLLECTOR OF CENTRAL EXCISE, KANPUR, VERSUS, FLOCK (INDIA) PVT. LTD., reported in (2000 20) E.L-T, 285 SC) has held that where an adjudicating authority has passed an order which is appealable under the statute and the party aggrieved did not choose to exercise the statutory right of filing an appeal it is not open to the party to question the correctness of the order of the adjudicating authority subsequently by filing a claim for refund on the ground that the adjudicating authority had committed an error in passing his order.

11.5 In view of the above said assessee has submitted that aforesaid ratio applies to issue involved. The refund OIO dated 06.04.2015 is appealable order and no appeal was filed by the department. In order to cover this legal lapse, issuance of Protective SCN is not remedy as appeal was not filed against OIO SD-02/REF04/NT/2015-16 dated 6.4.2015. Therefore, said SCN is not maintainable.

DISCUSSION AND FINDINGS:-

12. The proceedings under the provisions of the Finance Act, 1994 framed there under are saved by Section 174 of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further.

13. Firstly, I find that vide order dated 19.03.2020 passed by the NCLT, Ahmedabad, M/s. Zydus Technologies Ltd has undergone a corporate merger with Zydus Lifesciences Limited. Further, I have carefully gone through the Show Cause Notice, reply to SCN, facts of the case on record and other submissions made by the said assessee and find that following Protective Show Cause Notice was issued to the M/s. Zydus Technologies Ltd on ground that Commissioner (Appeals) has no powers to remand the case back to the original adjudicating authority and therefore Commissioner (Appeals) has committed gross error of law by remanding back the matter. Further, in said SCN service tax demand under Section 73(1) of Finance Act 1994 and interest under Section 75 was proposed:-

Table-3

Sr.No.	Show Cause Notice File No.	Date	Refund Order & Date	Amt. of Service Tax (Rs.)
1	STC/04-109/O&A/15-16 DATED 12.08.2016	12.08.16	SD-02/Ref-90/11-12 dated 01.06.2012	53,63,640/-

14. As per records available, I find that department had filed an appeal bearing No ST/12039/2014 before the Hon'ble Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, [CESTAT], Ahmedabad 29.05.2014 against OIA No. AHM-SVTAX-OOO-APP-331-13-14 dated 28.01.2014 and subsequently Show Cause Notice No.- STC-04/109/O&A/15-16 DATED 12.08.2016 was transferred in Call Book on 23.08.2016 in lieu of Circular No.- 719/35/2003 dated 28.05.2003 under category- 1 cases i.e. cases in which department has gone in appeal to the appropriate authority. Further, said Departmental Appeal No.- ST/12039/2014 was disposed off by Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, [CESTAT], Ahmedabad vide Final Order No.- A/12257/2023 dated 11.10.2023. Subsequently, Show Cause Notice No. STC/04-109/O&A/15-16 DATED 12.08.2016 has been retrieved from call book by the competent authority for adjudication purpose on 20.12.2023

15. In view of above, I proceed to decide Show Cause Notice No. STC/04-109/O&A/15-16 DATED 12.08.2016. I find that CESTAT Ahmedabad vide Final Order No.- A/12257/2023 dated 11.10.2023 dismissed appeal filed by the department on ground that issue of power to remand back cases by

Commissioner(Appeals) is no longer res-integra as held by the Hon'ble Jurisdictional High Court in the case of Associated Hotels Limited- 2015 (37) STR 723 (Guj.) in which the support was taken from the Hon'ble Supreme Court Judgment in the case of MIL India Limited Vs CCE, Noida- 2007 (210) ELT 188 (SC). Relevant para of said judgement is reproduced below:-

4. *We have carefully considered the submission made by both sides and perused the records. We find that the Commissioner (Appeals) after detailed observation has remanded the matter to the Adjudicating Authority. The relevant para of the order is reproduced below:-*

"12. Further, I find that the appellant has not submitted before me the copies of the invoices/documents/records on which the refund claim was relied upon, therefore, it is not possible at this juncture, to verify the claim with the relied upon documents. Hence, in view of my above findings, I hereby allow the appeal by way of remand to the original adjudicating authority with direction to re-examine the claim in light of findings under Para 7 to 11, above and pass a speaking and reasoned order, following principles of natural justice. I also direct the appellant to produce the relevant evidences/documents as required during the said proceedings.

13. *My above findings are backed by the judgment passed by Hon'ble Tribunal in case of Singh Alloys (P) Ltd. as reported in 2012(284) E.L.T. 97(Tri.-Del.), wherein the Hon'ble Tribunal, at para 10 of the Order, held that:*

"10. ... There may be circumstances where only just and proper order could be to remand the matter for fresh adjudication. For example, if the order-in-original is passed without giving opportunity of being heard to the assessee or without permitting him to produce evidence in support of his case, in such event while setting aside the order-in-original only just and fair order would be to remand the matter back for fresh adjudication after giving due hearing to the assessee. Thus, we are of the view that power to remand the matter back in appropriate cases is inbuilt in Section 35 A (3) of the Central Excise Act, 1944."

Also recently the Hon'ble Tribunal, Ahmedabad in case of Associated Hotels Ltd., have ruled out on similar way as follow:

" 7.it is to be held that as per the provisions contained in Section 85 (4) of the Finance Act, 1994, Commissioner(Appeal) has the powers to remand the case to the adjudicating authority for de-novo consideration in service tax matters".

4.1 *From the above order of the Commissioner (Appeals) it can be seen that the Commissioner (Appeals) has the remanded the matter with direction to reexamine the claim and to pass a speaking and reasoned order following the principle of natural justice. It was also directed to the respondent to produce the relevant evidence/documents, therefore, it is clear that the Adjudicating Authority has to examine the refund as whole.*

4.2 *As regard the issue whether the Commissioner (Appeals) has power to remand back the matter to the original authority, the issue is no longer resintegra as held by the Hon'ble Jurisdictional High Court in the case of Associated Hotels Limited- 2015 (37) STR 723 (Guj.) in which the support was taken from the Hon'ble Supreme Court Judgment in the case of MIL India*

Limited Vs CCE, Noida- 2007 (210) ELT 188 (SC). Therefore, in view of the settled legal position on this issue the remand made by the learned Commissioner (Appeals) is legal and proper. Accordingly, we do not find any infirmity in the impugned order. Hence, the same is upheld.

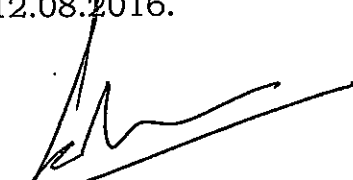
16. I find that CESTAT Ahmedabad vide above order dated 11.10.2023 has relied upon Judgment of Gujarat High Court in the case of Associated Hotels Limited- 2015 (37) STR 723 (Guj.) and Hon'ble Supreme Court Judgment in the case of MIL India Limited Vs CCE, Noida- 2007 (210) ELT 188 (SC) and held that remand made by Commissioner (Appeals) is legal and proper. Accordingly, I find that CESTAT Ahmedabad has passed a categorical order in the present matter and dismissed the appeal filed by the department. Further, I find that said Final Order No.- A/12257/2023 dated 11.10.202 passed by the CESTAT Ahmedabad has been accepted by the competent authority. Hence, I am of view that said matter attend finality and there is no further discussion needed on this issue. As the matter has already decided in favour of the said assessee, I find that Show Cause Notices No. STC/04-109/O&A/15-16 DATED 12.08.2016 is not sustainable and said SCN dated 12.08.2016 issued to M/s. Zydus Technologies Ltd demanding erroneous refund and proposing interest is to be withdrawn.

17. Further, I find that in the case of Kamalakshi Finance Corporation Ltd, as reported in 1991 (55) E.L.T. 433 (S.C.) in which the Hon'ble Supreme Court of India has observed that the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. Accordingly, I have to follow the Final Order No.- A/12257/2023 dated 11.10.202 passed by the CESTAT Ahmedabad in present matter.

18. In view of the foregoing discussion and findings, I pass the following order;

ORDER

- I. I hereby order to drop proceedings initiated against M/s. Zydus Technologies Ltd. Plot No. 1B, Pharmez (Zydus), Sarkhej-Bavla National Highway No. 8A, Village: Matoda, Tal. Sanand, District: Ahmedabad vide Show Cause Notice No. STC/04-109/O&A/15-16 DATED 12.08.2016.


(Lokesh Damor)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North

F.NO.STC/4-109/OA/2015-16
By Regd. Post AD./Hand Delivery

Dated 29.02.2024

To
M/s. Zydus Technologies Ltd.
Plot No. 1B, Pharmez (Zydus),
Sarkhej-Bavla National Highway No. 8A,
Village: Matoda, Tal. Sanand, District: Ahmedabad

Copy to:

- 1 The Commissioner of CGST & C.Ex., Ahmedabad North.
- 2 The Deputy Commissioner Division-IV, Central Excise & CGST, Ahmedabad North.
- 3 The Superintendent, Range-V, Division-IV, Central Excise & CGST, Ahmedabad North
- ✓4 The Superintendent (System) CGST, Ahmedabad North for uploading on website.
- 5 Guard File