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::आयुक्त (अपील) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,



द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142

Email: cevappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /  
Appeal / File No.  
V2/73/BVR/2017

मूल आदेश सं /  
O.L.O. No.  
18/Demand/2016-17

दिनांक /  
Date  
30.01.2017

ख अपील आदेश संख्या (Order-In-Appeal No.):

**BHV-EXCUS-000-APP-122-2017-18**

आदेश का दिनांक /  
Date of Order: 24.01.2018

जारी करने की तारीख /  
Date of issue: 07.02.2018

07.02.2018

Passed by **Shri Suresh Nandanwar, Commissioner, Central Goods and Service Tax (Audit), Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पठे बोर्डे ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री सुरेश नंदनवार, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर (लेखा परीक्षा), अहमदाबाद को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत टर्जे की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Suresh Nandanwar, Commissioner, Central Goods and Service Tax (Audit), Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellants & Respondent :-**

**M/s Makson Pharmaceuticals(I) Pvt. Ltd., Rajkot Highway, Kherali, Surendranagar - 363 020**

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपर्युक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/

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

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

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 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. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी।

The appeal under sub-section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 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 Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- धारा 11 डी के अंतर्गत रकम
- सेनवेट जमा की ली गई गलत राशि
- सेनवेट जमा नियमवाली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (स. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, 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, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

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

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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.

## (C) भारत सरकार को पुनरीक्षण आवेदन :

**Revision application to Government of India:**

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पैरालेग के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन टीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /  
In case of any loss of goods, where the loss occurs 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
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /  
In case of rebate of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /  
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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। /  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेट्टी कार्य से बचने के लिए यथास्थिति अपील न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding 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 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (कार्य विधि) नियमावली, 1962 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /  
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.

**ORDER-IN-APPEAL**

M/s Makson Pharmaceuticals, Rajkot-Highway, Kherali, Dist., Surendranagar-363020 (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.18/Demand/2016-17 dated 30.01.2017 (henceforth, "impugned order") passed by the Assistant Commissioner of Central Excise Division, Surendranagar. (henceforth, "adjudicating authority").

2. Subsequently, the Board Vide Order No. 05/2017-Service Tax issued vide F.No. 137/13/2017-ST dated 16.11.2017 by the Under Secretary (Service Tax), CBEC, New Delhi, has transferred the said Appeal Petition to the Commissioner, Central Tax Audit, Ahmedabad for passing Order-in-Appeal.

3. Briefly stated, the facts of the case are that a show cause notice was issued to the appellant on 21.03.2016 for recovery of Service Tax of Rs.3,09,103/- on the expenses towards 'Foreign Tours and Travels made by their Directors' as per the provisions of erstwhile Section 66A of the Finance Act,1994 and Place of Provisions of Services Rules,2012 after classifying the same under the category of " Business Auxiliary Services" during the period 2012-13 to 2015-16 ( upto 31.01.2016).The demand was raised on the ground that the expenses towards the above said services are falling under the definition of promotion or marketing or sale of the goods and also towards procurement of goods and services .The adjudicating authority, under the impugned order, confirmed the demand of Rs.3,09,103/- and ordered the same to be recovered along with interest. Penalty of Rs.10,000/- was also imposed under Section 77(1)(d) of Finance Act,1994 and penalty of Rs.3,09,103/- was imposed under Section 78 of the said Act.

4. The appellant has filed the appeal on the ground ;that out of total amount of Rs. 24,85,319/- incurred on foreign tours during the period in dispute, only Rs. 3,47,410/- was incurred in foreign currency towards hotel accommodation of the Directors. As per Rule 5 of Place of Provision of Services Rules, 2012,the place of provision of service for hotel accommodation is outside India being related to an immovable property. Hence, the demand to the extent of amount spent in foreign currency on hotel accommodation is not sustainable; that the payment towards booking of air tickets, Visa fee, medical policy, etc have been made to M/s. Naman Travels in relation to trips undertaken by the Directors of the company for official purposes, it is contended that they have incurred expenses in India when they have booked flight tickets, Visa , medical policy etc through their travel agency. There is no expenditure incurred in foreign currency on booking of flight tickets, Visa etc. The expenses were incurred towards foreign trips made by Directors but no payment has been made to any service provider located abroad with regard to booking of flights tickets, Visa, cancellation etc. The appellants are availing the services of M/s. Naman Travels who is a

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registered service provider in India and has collected Service Tax in the invoices raised by them. Hence, Service Tax has already been paid on the services received in relation to foreign tours of the Directors.; that the scope of "Business Auxiliary Services" covers the entire gamut of services rendered for or on behalf of the client ranging from procurement of goods, production of goods, provision of services, marketing and sales promotion, customer care and services incidental or auxiliary to the aforesaid activities. In order to classify under the "Business Auxiliary Services" there has to be a tri-partite arrangement i.e services have to be provided on behalf of a third party. In their case, there is no rendering of services 'on behalf of client'. The directors of appellants have made foreign trips for official purposes and the only services received by the appellants are that of tours and travel agency i.e M/s. Naman Travels for booking of air tickets, cancellation, visa, etc. The payments have been made to M/s. Naman Travels in India and Service tax has been collected in the invoices raised.; that Section 68 of Finance Act, 1994 read with Rule 2(1)(d)(G) of Service Tax Rules, 1994 has no application in the instant case as no service is imported. Further the Directors by undertaking foreign trips for official purposes are not rendering any service to the appellants and hence Sl.no. 5A of Notification No. 30/2012-ST is not applicable; that the amount of Rs. 24,85,319/- which includes the amount of Rs. 6,96,486/- pertaining to ticket cancellation which was never incurred and the travel agency i.e M/s. Naman Travels raised a credit note of the relevant amount whenever any ticket was cancelled by the appellants. Accordingly, quantification of demand is incorrect and the demand in any case cannot be confirmed on the amount of Rs. 6,96,486/-. The appellant has cited number of decisions which were relied upon in their present appeal. The appellant has also contested the charge of suppression of facts and imposition of penalty.

5. A personal hearing was held on 04.01.2018, wherein Ms. Priyanka Kumari, Advocate represented the appellant and reiterated the grounds of appeal.

6. I have carefully gone through the appeal papers. Considering that appeal against impugned order passed on 30.01.2017 has been filed on 28.03.2017, I find that the appeal has been filed within the time limit of three months prescribed under Section 85 of the Finance Act, 1994. I also note that the appellant has made the payment of Rs. 23,183/- i.e 7.5% of demand of Service Tax of Rs. 3,09,103/- vide Challan No. 00660 dated 23.03.2017 towards the pre-deposit.

7. The issue which is to be decided is whether expenses reflected in the Appellant's Ledger Account of Foreign travelling Expenses for the year 2012-13 to 2015-16 (till Jan-2016) are liable to service tax under the category of "Business Auxiliary Services" and whether the appellant is liable to discharge service tax on the same under reverse charge mechanism as per the extant legal provisions. From the ledgers submitted by them, I find that the expenses are pertaining to 'Air Ticket, Cancellation of Air Ticket, Visa Fee, Medical Policy and payment made mainly to one Travel Agency Firm viz. Naman

Travels and references of such expenses are attributed to Mr. Makasana Dhanjibhai, Mr. Makasana Kalpeshbhai with such attributions like; Cathay Pacific, Air India, Emirates, Visa Fee, Visit to Abu Dhabi etc. Thus, it transpires that the expenses are made by the appellant towards the foreign tours of directors either in foreign currency or payments made in Indian Rupees to travel agency in India for such tours. There is no dispute that these expenses were incurred by the appellants towards the business tours of their Directors. In other words, such expenses were nothing but the payment made for the promotion of their own business. As the Directors have been travelling on foreign tours for promotion of the business run by the appellants, the services under the category of "Business Auxiliary Services" as defined under Section 65(19) of the Finance Act, 1994 have been rendered by the directors to the Appellants. As per Section 68 of the Finance Act, 1994 read with Rule 2(d) (G) of Service Tax Rules, 1994, the appellants are liable to pay Service tax in respect of the services provided by the Director to the company i.e. said appellants, which is specified at Sl. No. 5A Notification No. 30/2012-ST dtd. 20.06.2012 as amended.

8. In view of aforesaid provisions, the appellant is liable to pay 100% Service tax as the said services have been provided by the Director of the company and are reflected in their accounts ledger and Balance sheet. As per the above said Notification, the appellant is liable to pay Service tax under Reverse Charge Mechanism on the entire amount of the services provided by the Director or in respect of expenses on services towards Director.

9. As far as invocation of extended period of demand is concerned, I find that the fact that the appellant had not taken into account the correct taxable value for the purpose of payment of service tax as applicable, was revealed only during the verification of records of the appellant carried out by the department. This act of deliberate defiance of law has to be reprimanded. I, therefore find that extended period has been correctly invoked for demand of service tax. The case laws cited by the noticee are not relevant in the instant case as the noticee had failed to fulfill their legal obligation by assessing the true taxable value and discharging the service tax liability on the same.

The Hon'ble Supreme Court in the case of Commissioner of C. Ex., Aurangabad Versus Bajaj Auto Ltd - 2010 (260) E.L.T. 17 (S.C.) - has held:

*"12. Section 11A of the Act empowers the central excise officer to initiate proceedings where duty has not been levied or short levied within six months from the relevant date. But the proviso to Section 11A(1), provides an extended period of limitation provided the duty is not levied or paid or which has been short-levied or short-paid or erroneously refunded, if there is fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty. The extended period so provided is of five years instead of six months. Since the proviso extends the period of limitation from six months to five years, it needs to be construed strictly. The initial burden is on the department to prove that the*



situation visualized by the proviso existed. But the burden shifts on the assessee once the department is able to produce material to show that the appellant is guilty of any of those situations visualized in the Section."

In this case also I find that the department has been able to bring on record that the appellant had failed to pay service tax. The appellant failed to offer any plausible explanation except to cite some judgments, which as discussed supra I have found to be distinguishable in the facts of the present case. Therefore, I find that the extended period for demand of Central Excise duty not paid, is rightly invoked in this case. I also find that by acting in the manner as above, the said appellant have rendered themselves liable for penal action under Section 78 of the Finance Act, 1994 and also under Section 77(1)(d) of the said Act.

10. The appellant has also claimed waiver of penalty under erstwhile section 80 of the Finance Act, 1994 on the ground that they had bonafide belief that no service tax is payable under "Business Auxiliary Service" on the expense incurred on foreign tours. However, from the aforesaid facts and discussion, I find that the charge of suppression & mala fide with intent to evade duty is convincingly established against the appellant and I am also unable to accept any claim of *bona fide*.

**In the case of Commissioner of Central Excise, Raipur Versus Raj Wines – 2012 (28) STR 46 (Tri. Delhi) it was held:**

*"15. In the matter of involving Section 80 of the Finance Act, 1994, we are not in agreement with the finding of the Commissioner (Appeals). A person giving his own interpretation of notification and then arguing that he was under the bona fide belief cannot get the protection of such Section 80."*

In view of forgoing, I hold that the benefit of waiver of penalty under erstwhile Section 80 is not admissible to the appellant.

11. The appellant has submitted that out of total amount of Rs. 24,85,319/- incurred by the Appellants on foreign tours during the period in dispute, only Rs. 3,47,410/- was incurred in foreign currency towards hotel accommodation of the Directors. It has also been submitted that the hotels providing accommodation are situated in foreign countries, hence the place of provision of service is outside India as per Rule 5 of Place of Provision of Service Rules, 2012. The said Rule is as under :-

*" 5.Place of provision of services relating to immovable property.- The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called, grant of rights to use immovable property, services for*

*carrying out or co-ordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located."*

The appellant has claimed that they have made direct payment during the relevant period to the Hotels situated in foreign countries for providing accommodation to the Directors on business tours. I find that where the hotels providing accommodation are situated in foreign countries, the place of provision of service is outside India and hence the demand to the extent of amount paid in foreign currency on hotel accommodation is set aside. However, the actual amount needs to be quantified for this purpose. Accordingly, I direct the adjudicating authority to verify the actual amount spent in foreign currency on hotel accommodation after taking into account the necessary documents submitted by the appellant before him.

12. It has been further submitted by the appellant that the demand raised by the department on the taxable amount of Rs.24,85,319/- also includes the amount of Rs. 6,96,486/- pertaining to ticket cancellation. I find that the amount towards cancellation of tickets cannot be considered to be a part of service and hence I hold that such amount needs to be deducted from the total taxable amount. As the actual amount needs to be verified for this purpose, I direct the adjudicating authority to verify the actual amount pertaining to cancellation of tickets after taking into account the necessary documents submitted by the appellant before him.

13. The appellant has also made submission that they have availed the services of M/s. Naman Travels who is a registered service provider in India and has collected service tax on the invoices raised by them. As such the service tax has already been paid on the services received in relation to foreign tours of the Directors. Taking cognizance of this submission, I hold that the appellant is entitled to have deduction of the service tax already paid by them on the invoices raised by a service provider in India. However, in order to ascertain the quantum of service tax so paid, I refer the matter to adjudicating authority with a direction to verify the actual amount of Service tax after taking into account the necessary documents submitted by the appellant before him.

14. In view of the facts and discussion herein above, I allow the appeal partially and remand the case back to the adjudicating authority for the limited purpose of quantification of amount as discussed in paras 10,11 and 12 above. The penalty imposed under Section 78 of the Finance Act, 1994 shall commensurate with the service tax finally confirmed after re-quantification. The appellant is also directed to put all the evidences before the adjudicating authority in support of their claim as well as any other details/documents etc that may be asked by the adjudicating authority when the matter is heard in the remand proceedings before the Adjudicating Authority. These findings of mine are supported by the decision/order dtd. 03.04.2014 of the Hon'ble High Court of Gujarat in the Tax Appeal V/s Associated Hotels Ltd and also by the decision of the





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Hon'ble CESTAT, WZB , Mumbai in case of Commissioner of Central Excise ,Pune-I  
V/s. Sai Advantium Ltd and reported in 2012 (27) STR 46 (Tri-Mumbai).

15. The appeal filed by the appellant stand disposed off in above terms.



(सुरेश नंदनवार)  
आयुक्त  
केंद्रीय कर लेखा परीक्षा  
अहमदाबाद

F.No. V2/73/BVR/2017

Date: 24.01.2018

By R.P.A.D.

To,  
M/s Makson Pharmaceuticals (I) Pvt Ltd,  
Rajkot Highway, Kherali,  
Surendranagar-363020

Copy to:

- 1.The Chief Commissioner of CGST, Ahmedabad Zone.
- 2.The Commissioner of Central Tax, Bhavnagar.
- 3.The Additional Commissioner, Central Tax (System), Bhavnagar.
- 4.The Asstt./Deputy Commissioner, Central Tax, Division-Bhavnagar,
5. Guard File.