

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10029 of 2022- DB

(Arising out of OIA-AHM-EXCUS-002-APP-39-2021-22 dated 01/12/2021 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

CADILA PHARMACEUTICALS LTD

.....Appellant

Cadila Corporate Campus,
Sarkhej- Dholka Road,
Village: Bhat Dholka
Ahmedabad, Ahmedabad, Gujarat

VERSUS

C.S.T.-SERVICE TAX - AHMEDABAD

.....Respondent

7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
Central Excise Bhavan, Ambawadi,
Ahmedabad, Gujarat- 380015

APPEARANCE:

Shri S. J. Vyas, Advocate for the Appellant

Shri, Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR**

Final Order No. 11758/2023

DATE OF HEARING: 03.07.2023

DATE OF DECISION: 23.08.2023

RAMESH NAIR

This appeal is directed against impugned order in appeal dated 24.11.2021. Whereby, the Learned Commissioner (Appeals) has remanded the matter to the Adjudicating Authority, to examine the issue on merit following the principles of natural Justice. The issue involved in the present case is that whether the payment of fees paid to USFDA for approval of their medicaments can be treated as service as per Finance Act, 1994 and consequently liable to Service Tax on reverse charge basis under Section 66A or otherwise.

2. Shri S. J. Vyas, Learned Counsel appearing on behalf of the appellant submits that the Adjudicating Authority in his order clearly held that the fees paid to USFDA is not against any service on the ground that it is a statutory fees paid to the Government of U.S.A. therefore no service is involved hence dropped service tax liability. It is a submission that against the Order-in-Original the revenue filed the appeal before commissioner (Appeals). However, whether the activity is service or otherwise was not challenged. Therefore, the remand by the commissioner (Appeals) is not legal and proper. Hence the order needs to be set aside.

3. Shri Rajesh Nathan, Learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the findings of the impugned order. He submits that the entire case involved the taxability of the activity for which the fees was paid to USFDA. Therefore, the issue whether the activity is service or otherwise is a part of overall dispute raised by the revenue before the Commissioner (Appeals). Accordingly, the Learned Commissioner (Appeals) has rightly remanded the matter to the Adjudicating Authority.

4. We have carefully considered the submission made by both sides and perused the records. We find that the limited issue in the present appeal is that whether the remand ordered by the commissioner (Appeals) is correct or otherwise. We find that the entire issue involved is whether the fees paid by the appellant to overseas USFDA is against the service and hence the same is liable to Service Tax or otherwise. The Learned Counsel strongly submits that the Adjudicating authority has decided that the fees paid by the appellant to USFDA is not towards any service on the ground that the USFDA is a Government of USA department, therefore, no service is involved.

4.1 We find that the activity is a service or otherwise that depends on the issue that whether the USFDA should be treated as Government in terms of 'Negative List' under Section 65B(37). Therefore, the activity is service or otherwise is a consequential to the decision, whether the Service provider to the government or other than the Government. Therefore, we do not agree with the appellant that the decision of the activity as service attained finality as per original order, which was not challenged by the department before the Commissioner (Appeals). Accordingly, we do not find any infirmity in the impugned order in appeal whereby the matter was remanded to the commissioner (Appeals). The appellant is at liberty to raise any of the issue in their defense before the Adjudicating authority. Therefore, the remand is not prejudicial to the interest of the appellant. Hence, we are of the view that the impugned order is clearly sustainable and the appeal has no substance.

5. Therefore, the impugned order is upheld and the appeal filed by the appellant is dismissed.

(Pronounced in the open court on 23.08.2023)

**(RAMESH NAIR)
MEMBER (JUDICIAL)**

**(C L MAHAR)
MEMBER (TECHNICAL)**