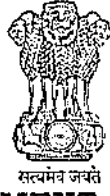


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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

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F. NO. 196/05, 06, 07(I to VII)/15-RA-CX/1004 Date of Issue: 9.03.2022

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ORDER NO. <sup>16-24</sup> /2022-ST (WZ) /ASRA/MUMBAI DATED 07.03.2022 OF  
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL  
EXCISE ACT, 1944.

Applicant : M/s Unimed Technologies Limited,  
Baska Ujeti Road, Village Ujeti,  
Halol -389 350, Panchmahal,  
Gujarat.

Respondent : Commissioner of Central Excise & GST, Vadodara - II  
Commissionerate.

Subject : Revision Applications filed under Section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal No.  
VAD-EXCUS-002-APP-653 to 661/14-15 dt. 29.01.2015  
passed by Commissioner (Appeals), Central Excise,  
Customs and Service Tax, Vadodara.

## **ORDER**

The subject Revision Applications have been filed by M/s Unimed Technologies Limited (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 29.01.2015 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara. The said Order-in-Appeal disposed of appeals against six Orders-in-Original all passed by the Assistant Commissioner, Central Excise, Customs & Service Tax, Division – Wagodhia, Vadodara – II, which in turn disposed of nine rebate claims filed by the applicant.

2. Brief facts of the case are that the applicant filed rebate claims seeking refund of Service Tax paid by them on the services of 'Scientific and Technical services' which was exported in terms of notification no.09/2005-ST dated 03.03.2005. The same was rejected by the original Adjudicating Authority vide six Orders-in-Original on the grounds that the transaction between the applicant and their client abroad was that of a sale and not provision of service.

3. Aggrieved, the applicant filed appeal before the Commissioner (Appeals) against the said Orders-in-Original resulting in the impugned Order-in-Appeal dated 29.01.2015. The Commissioner (Appeals) found that the applicant had received technical know-how from their supplier and that all the rights to the said technical know-how were vested with the applicant at that point of time. The Commissioner (Appeals) found that the applicant, admittedly, had provided the said 'technical know-how' as such to their client and held that such a transaction was in the nature of sale of 'Intellectual Property' and there was no service provided by the applicant. In view of the above finding the Commissioner (Appeals) upheld the Orders of the original Authority.

4. Aggrieved, the applicant has filed the subject Revision Applications against the Order-in-Appeal on the following grounds:-

(a) The Commissioner (Appeals) did not appreciate that the Adjudicating Authority cannot act arbitrarily and should have issued separate show cause notice in the present case as an issue other than refund was involved;

that an issue not raised in the Show Cause Notice cannot be raised in the adjudication process;

(b) Para 1.2, 3, 8, 8.3. 22.1, 22.2 of the agreement between the applicant and M/s Sun Pharma Global Inc. (SPGI) made it clear that technology was provided by them only for certain territories with the clause that continuous rights and liabilities and terms of termination which indicated that there was no permanent transfer and that the ultimate right to the said technology would remain with the applicant; and hence there was no sale as held by the Commissioner (Appeals);

(c) They had procured the input service from M/s Sun Pharmaceutical Industries Limited (SPIL) and M/s Sun Pharma Advanced Research Company Limited (SPARC) which they used in the manufacture of their final products and thereafter transferred the technology to SPGI, Dubai; that they fit in the description of a 'Scientific and Technical Consultancy' service provider as they were an organization which establishes and develops manufacturing technology/technical know-how of certain products and transfers the same to SPGI, Dubai and had availed cenvat credit on input services, the rebate of which could not be denied; that though the nature of both input and output services were the same, output service was transferred to SPGI after utilizing the input services of research and development;

(d) SPIL and SPARC had provided them advice and consultancy of various formulations and know-how of specific products and that they had used the said input services for establishing the process technical know-how for the manufacture of such products and also had exported such service to SPIGL, Dubai and therefore input service received by them had been utilized for providing output service;

(e) That the issue of admissibility of Cenvat credit should not have been raised at the time of sanctioning rebate claim and that separate proceedings should have been initiated for denying the same;

(f) That the input services received by them would fall under the category of 'Scientific and Technical Consultancy Service' as reflected by the Agreements they had got into with their suppliers;

- (g) That they had been issued a Show Cause Notice dated 28.10.2010 on the grounds that input services were exported without being used in providing output services and thus credit utilized by them could not be used by them; that the matter was under adjudication and that the Tribunal had vide its Order dated 19.04.2012 granted an unconditional stay in their case;
- (h) That in their case the transfer of technology was not a one time transfer but a continuous service of consultancy provided by them as they were responsible to guide and help their client as and when they faced difficulties and hence the services provided could not be termed as 'Intellectual Property Service' and was 'Scientific and Technological Consultancy Service';
- (i) That the judicial decisions referred to by the Commissioner (Appeals) was not applicable to their case;
- (j) That having common Directors between two companies could not be a factor/ground for rejecting a rebate claim and hence the query raised by the Department in this connection was futile; and
- (k) That they had fulfilled all the conditions mentioned in notification no.27/2012-CE(NT) dated 18.06.2012.

In light of the above, the applicant submitted that the impugned Order-in-Appeal deserved to be set aside.

5. Personal hearing in the matter was granted to the applicant on 15.07.2021. Shri Ashok Nawal, Chartered Accountant, appeared online on behalf of the applicant. He reiterated the submissions made and stated that they would be mailing additional submissions. He requested that the pending claims be allowed.

6. They made further written submissions which reiterated their earlier submissions. They additionally submitted that they had raised Debit Notes to SPGI and that the consideration was inclusive of all consultancy charges provided by them and the rebate claim filed was towards such taxable services.

7. Government has carefully gone through the relevant records available in case files, the written submissions and also perused the impugned Orders-in-Original and the impugned Order-in-Appeal.

8. Government observes that that the dispute in the present case is regarding admissibility of rebate of service tax paid on services exported by the applicant. The Commissioner (A) has held the transaction to be a sale and has upheld the order of the original adjudicating authority rejecting the claim for rebate of the service tax paid on the services exported. Government finds that at this juncture it is pertinent to examine Section 86 of the Finance Act, 1994 which deals with appeals to the Hon'ble Tribunal; the same is reproduced below:-

*"Section 86. Appeals to Appellate Tribunal. -*

*(1) Save as otherwise provided herein an assessee aggrieved by an order passed by a Principal Commissioner of Central Excise or Commissioner of Central Excise under section 73 or section 83A by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order.*

*Provided that where an order, relating to a service which is exported, has been passed under section 85 and the **matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service**, such order shall be dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944(1 of 1944).*

*Provided further that all appeals filed before the Appellate Tribunal in respect of matters covered under the first proviso, after the coming into force of the Finance Act, 2012(23 of 2012), and pending before it up to the date on which the Finance Bill, 2015 receives the assent of the President, shall be transferred and dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944(1 of 1944)."*

*[Emphasis supplied]*

A plain reading of Section 86 of the Finance Act, 1994 indicates that the power for Revision of Orders of the Commissioner (Appeals) by the Central Government, as provided for by Section 35EE of the Central Excise Act, 1944, is limited to those matters which relate to *grant of rebate of service tax or duty paid on input services which were used in providing a service which was exported*. As discussed above, the instant issue pertains to rebate of

service tax paid on the services exported and not on inputs/input services used for providing the same and hence Government notes that in terms of Section 86 of the Finance Act, 1994, it does not have jurisdiction over any matter relating to the same.

8. In view of the above, Government dismisses the subject Revision Applications as the same are non-maintainable due to lack of jurisdiction.

*Shrawan*  
7/3/21  
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. \6 /2022-~~ST~~ (WZ) /ASRA/Mumbai dated 07.03.2022

To,

M/s Unimed Technologies Limited,  
Baska Ujeti Road, Village Ujeti,  
Halol -389 350, Panchamahar,  
Gujarat.

Copy to:

1. The Commissioner of CGST & Central Excise, Vadodara – II Comm'te, Arkee Garba Ground, Nr. Tel.Exchange, Subhanpura, Vadodara 390023.
2. The Commissioner (Appeals), GST & Central Excise, Vadodara, 'GST BHAVAN' 1<sup>st</sup> floor Annex., Race Course Circle, Vadodara – 390 007.
3. Sr. P.S. to AS (RA), Mumbai
4. Notice Board.