



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा

GST-Building, 7th Floor,

Near Polytechnic,

Ambavadi, Ahmedabad-

380015

सातवीं मंजिल, पोलिटेकनिक के पास,

आम्बावाडी, अहमदाबाद-380015

079-26305065

टेलिफैक्स : 079 - 26305136



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क फाइल संख्या : File No : V2/21,25,26&29/RA/GNR/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-0124-127-18-19

दिनांक Date : 20-11-2018 जारी करने की तारीख Date of Issue: 18/12/2018

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

G. file

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
01,5,6&7/AC/CGST/18-19 दिनांक : 23-05-2018 से सृजित

Arising out of Order-in-Original 01,5,6&7/AC/CGST/18-19, Date: 23-05-2018 Issued by:
Assistant Commissioner, Central Excise, Div:Kadi, Ahmedabad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Scion, Aan, Elikem, Pramukh Swami Pharma Pvt Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to country or territory outside India.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित तो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

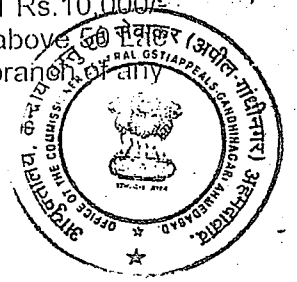
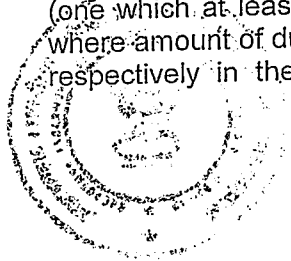
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मागले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ राहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे 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 adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपील के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 43 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते 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 है

- (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 बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जों एवं अपील को लागू नहीं होंगे।

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.

(6)(i) 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।

(6)(i) 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."



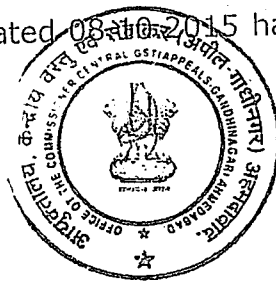
ORDER-IN-APPEAL

This order arises out of following four appeals, which involves common issue filed by the Assistant Commissioner of CGTST & Central Excise, Kalol Division, Gandhinagar Commissionerate [hereinafter referred to "the department"] in terms of Review Order of the Commissioner of CGST, Gandhinagar, against Order-in-Originals mentioned below [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner of CGST & CEx, Kalol Division [hereinafter referred to as "the adjudicating authority"] against parties mentioned against the impugned order [for short-respondents].

S No	Appeal No.	Impugned order No.& date	Review order No. & date	Respondent's name
1	21/RA/GNR/18-19	01/AC/CGST/2018-19 dated 23/28.05.2018	09/2018-19 dtd 05.09.18	Scion Pharma Pvt Ltd
2	25/RA/GNR/18-19	07/AC/CGST/2018-19 dated 29.05.2018	21/2018-19 dtd 10.09.18	Aan Pharma Pvt Ltd
3	26/RA/GNR/18-19	06/AC/CGST/2018-19 dated 29.05.2018	14/2018-19 dtd 05.09.18	Eikem Pharma
4	29/RA/GNR/18-19	05/AC/CGST/2018-19 dated 29.05.2018	03/2018-19 dtd 05.09.18	Pramukh Swami Pharma Ltd

2. Briefly stated, the facts of the cases are that the respondents were engaged in manufacture of goods falling under chapter 30 of CETA and were availing SSI exemption under Notification No.08/2003 dated 01.03.2003 as amended in the year 2001-02 to 2005-06 for their own production and paying duty for the clearance of loan licensees from the first clearances. The respondents were falling within the definition of Rural areas as defined in para 4 of the said notifications; that as per clause of the said notification, goods manufactured in "Rural area" and cleared under others brand name are eligible for inclusion in SSI exemption up to a clearance of Rs.100 lakhs in any financial year. However, the respondents were choosing to pay the full rate of duty on the goods bearing the brand name of others. The respondents by not clubbing the clearance values of the goods manufactured for various loan licensees and by availing SSI exemption for the periods of 2001-02 to 2005-06 resulted a short payment of central excise duty. Therefore, show cause notices were issued to the respondents for recovery of short payment of duty with interest. The said show cause notices also proposes for imposition of penalty under Section 11 AC of Central Excise Act, 1944.

2.1 Meanwhile, in an identical matter in respect of M/s Rhombus Pharma Pvt Ltd, Commissioner (A) had dropped the proceedings initiated by show cause notices as time barred as no suppression was proved. Since the department has filed an appeal before CESTAT, all the above show cause notices issued to the respondents were kept in call book. The CESTAT, vide order dated 08.10.2015 has rejected the



department appeal and directed to re-quantify the demand for the normal period of limitation. Further, the CESTAT in case of Pharmanza India has passed an order No.A/1330134/2009 dated 07.01.2009, wherein it has held that the duty already paid on branded goods are required to be adjusted against the duty demanded from the assessee and directed for re-quantification of such duty.

2.2 In view of above referred CESTAT's orders, the adjudicating authority has decided the show cause notices, vide impugned order by dropping the demand of beyond normal period as time barred and confirmed the demand with interest falling within normal period. A penalty of Rs.50,000/- each was also imposed against the respondents.

3. Being aggrieved with the impugned order, the department has filed the instant appeals on the grounds that the adjudicating authority has failed to ascertain the actual date of filing of returns which is a relevant date for ascertaining the extended period and normal period of demand as provided in explanation 1(b) of Section 11A of CETA; that there is a difference between short payment demanded in the show cause notices and total duty covered in the impugned order. Therefore, the impugned order and deserves to be remanded back.

4. A personal hearing in the matter was granted on 25.10.2018. None appeared from the Department side as well as for the respondent. Instead, the respondent has filed a cross-objection, wherein, they, inter-alia, submitted that the appeal filed by them against the impugned order in respect of demand confirmed has already been decided by the Appellate authority; that the Appellate authority has remanded the case to the adjudicating authority for re-quantification of the duty in dispute for the relevant period as per CESTAT's order. They requested to dismiss the appeal filed by the department.

5. I have carefully gone through the facts of the case and submissions made by the department in their appeal and also the submissions made by the respondent.

6. At the outset, I find that the impugned order, against which the department has filed the instant appeals, were decided by the adjudicating authority on the basis of the Hon'ble CESTAT's order No.A/11396-11397/2015 dated 08.10.2015 against M/s Rhombus Pharma Pvt Ltd and M/s Pharmanza India. In the case of M/s Rhombus Pharma Pvt Lt, it has been concluded that the demand of duty for the extended period of limitation cannot be sustained and only the demand for the normal period of limitation is sustainable. In the case of M/s Pharmanza India, the Hon'ble Tribunal has held that the duty already paid on goods cleared by the loan licensee is required to be adjusted against the duty demand.

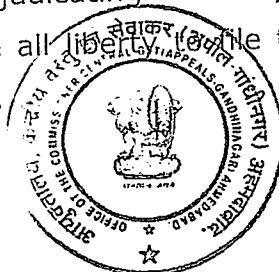


7. I find that the respondents were filed an appeal before the Appellate authority against the same impugned order in question in the instant appeals, with respect to confirmation of duty short paid and the said appeals were decided by me vide OIAs. In the said OIAs, all the cases were remanded to the adjudicating authority with a specific direction to re-quantify the duty and adjustment of duty against the demand, as per Hon'ble CESTAT's orders referred to above. The details of impugned order against which the respondents filed the appeal and OIAs are as under.

S No	Impugned order No.& date	Name of respondent	OIA NO. & Date
1	01/AC/CGST/2018-19 dated 23/28.05.2018	Scion Pharma Pvt Ltd	AHM-EXCUS-003-APP-90-18-19 dated 14/22.09.2018
2	07/AC/CGST/2018-19 dated 29.05.2018	Aan Pharma Pvt Ltd	AHM-EXCUS-003-APP-92-18-19 dated 14/22.09.2018
3	06/AC/CGST/2018-19 dated 29.05.2018	Elikem Pharma	AHM-EXCUS-003-APP-98-18-19 dated 14/22.09.2018
4	05/AC/CGST/2018-19 dated 29.05.2018	Pramukh Swami Pharma Ltd	AHM-EXCUS-003-APP-91-18-19 dated 14/22.09.2018

8. I find that the instant appeals mentioned at para 1 above filed by the department are also against the same impugned order which I have already decided vide OIA mentioned above. The department has filed these appeals on the grounds that the adjudicating authority has not ascertained the re-quantification of duty, by taking consideration the actual date of filing of returns which is a relevant date for ascertaining the extended period and normal period of demand. The department has also contended that the adjudicating authority has not covered all the short payment demanded in the show cause notices, while passing the impugned order; that there is difference between total short payment demanded and short payment dropped/confirmed, therefore, the impugned order deserves to be remanded back.

9. As regards the contention of the department that the adjudicating authority has not ascertained the duty properly or not given any detailed justification on which the demand was re-quantified, I find that the matter has already been decided by me, vide OIAs mentioned above by remanding the case to verify by the adjudicating authority according to the duty particulars paid by the appellant and adjustment of duty needs to be made accordingly, as has been held by the Hon'ble Tribunal in their order referred to above. As regards the second contention of the department that the adjudicating authority has not considered the whole amount of duty demanded while passing the impugned order, I am of the view that in the remand proceedings of these cases, the whole issues raised by the department in their appeal are required to be considered by the adjudicating authority and decide the matter afresh accordingly. The respondents are all ~~liber~~ to file their written submissions, if any before the adjudicating authority.



10. In view of above discussion, I allow all the four appeals filed by the department by way of remand. The appeals stand disposed of accordingly.

उमा शंकर

उमा शंकर)

आयुक्त (अपील्स)

Date : .11.2018

Attested

Mohanan V.V
(Mohanan V.V)
Superintendent (Appeal),
Central Tax, Ahmedabad.



By RPAD.

To,
M/s Scion Pharma Pvt Ltd
Plot No.789, Sola Santej Road,
Village-Rakanpur, Taluka Kalol
Gandhinagar Dist.

M/s Ann Pharma Pvt Ltd
Plot No.816/1, Village-Rakanpur, Taluka Kalol
Gandhinagar-Dist

M/s Elikem Pharma Ltd
Plot No.816/1, Sola Santej Road,
Village-Rakanpur, Taluka Kalol
Gandhinagar

M/s Pramukh Swami Pharma Ltd
Plot No.1185/A, Santej, Taluka Kalol
Gandhinagar

The Assistant Commissioner
CGST, Division Kadi.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Gandhinagar.
3. The Assistant Commissioner, System, Central Tax, Gandhinagar
4. The Assistant Commissioner, CGST, Kadi Division
5. Guard File.
6. P.A.

