
	केन्द्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन सत्यमेव जयते		
सत्यमेव जयते		GST Building, 7 th Floor, Near Polytechnic Ambavadi, Ahmedabad- 380015	
सत्यमेव जयते		380015	
सत्यमेव जयते		टेलीफैक्स : 079-26305136	
सत्यमेव जयते		टेलीफोन : 079-26305065	

क फाइल संख्या : File No : V2/24/RA/GNR/2018-19

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ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-138-18-19

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

2/1/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

G. Jile

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग **अपर** आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : 09/AC/CGST/18-19
दिनांक : 25-05-2018 से सृजित

Arising out of Order-in-Original: 09/AC/CGST/18-19, Date: 25-05-2018 Issued by:
Assistant Commissioner, CGST, Div:Kadi, Gandhinagar Commissionerate, Ahmedabad.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Gujarat Terce Laboratories 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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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।

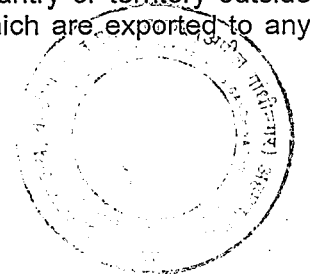
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

(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 any 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 वो 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 मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

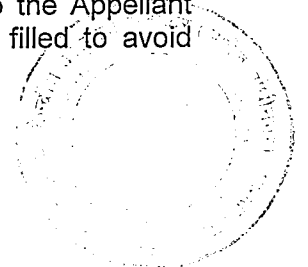
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित 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 Lac 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 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 lacs fee of Rs.100/- for each.



(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 23 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 अर्ज़ी एवं अपील को लागू नहीं होगा।

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:

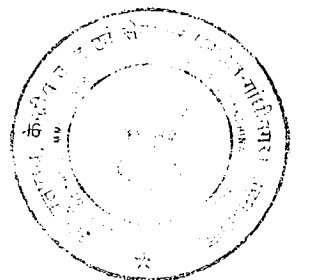
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

This appeal has been filed by the Assistant Commissioner of CGTST & Central Excise, Kadi Division, Gandhinagar Commissionerate [hereinafter referred to "the department"] as per Review Order No.15/2018 dated 10.09.2018 of The Commissioner of CGST, Gandhinagar, against Order-in-Original No.09/AC/CGST/18-19 dated 29.05.2018 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner of CGST & CEX, Kadi Division [hereinafter referred to as "the adjudicating authority"] in respect of M/s Gujarat Terce Laboratories Ltd, 122/2, Bileshwarpura, Taluka Kalol [hereinafter referred to as "the respondent"].

2. Briefly stated, the fact of the case is that the respondent were engaged in manufacture of goods falling under chapter 30 of CETA and were availing SSI exemption under Notification No.09/2003 and 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 respondent was failing 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 respondent was choosing to pay the full rate of duty on the goods bearing the brand name of others. The respondent 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 short payment of Rs.5,47,985/-. Therefore, a show cause notice dated 17.07.2006 was issued to the respondent for recovery of Rs.5,47,895/- with interest and for imposition of penalty under Section 11 AC of Central Excise Act, 1944.

2.1 The above show cause notice was kept in call book as the department has filed an appeal before the Hon'ble CESTAT, against a order passed by the Commissioner (A) in an identical matter in respect of M/s Rhombus Pharma Pvt Ltd; that in the said case, the Commissioner (A) had dropped the proceedings initiated in the show cause notices as time barred as no suppression was proved. The CESTAT, vide order dated 08.10.2015 has rejected the department appeal by upholding the Appellate authority's order and directed to re-quantify the demand for the normal period of limitation only. Further, the CESTAT in case of Pharamanza India has also passed an order No.A/1330134/2009 dated 07.01.2009, wherein it has been 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 CESTAT's orders, the adjudicating authority has decided show casue notice dated 17.07.2006, vide impugned order and held that the demand of duty for extended period is not sustainable, by following the CESTAT's

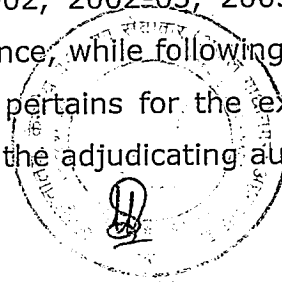
order supra. He further held that there is no demand or short paid for normal period as the demand of duty is entirely time barred.

3. Being aggrieved with the impugned order, the department has filed the instant appeal 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; thus the adjudicating authority has failed to justify that the demand is time barred.

4. A personal hearing in the matter was held on 20.11.2018. Smt Shilpa P Dave, Advocate appeared for the same and explained the case. The learned advocate submitted a written submission wherein, inter-alia, stated that as per para 21.13 of the impugned order, the respondent had crossed threshold limit of Rs.1 crore on 28.05.2005 and was paying duty on all clearance thereafter; that for arriving at the period of limitation, considering the date of delivery of show cause notice as 25.07.2006, the normal period for which the demand if any could be raised is 26.07.2005 to 31.03.2006. However, the disputed period in the instant case is 2001-02 to 29.05.2005. Even if the date of filing of return is considered, then also the demand is time barred.

5. I have carefully gone through the facts of the case and submission made by the department as well as by the respondent. I observe that the adjudicating authority has decided the instant issue on the basis of CESTAT's above referred order and dropped the proceedings initiated in the show cause notice dated 17.07.2006. In the instant appeal, the department has only contended that the adjudicating authority has not quantified the duty properly according to the said order of Hon'ble CESTAT.

6. In the impugned order, the adjudicating authority has contended that the respondent had filed monthly ER-1 return for the year 2005-06 and according to the said ER-1, the respondent had crossed their threshold exemption limit on 28.05.2005, while considering their own clearance value and clearance value of the loan licensees. I find that as per the impugned order, the demand raised for the year 2001-02 is Rs.67,228/-, for 2002-03 is Rs.9149/-, for 2003-04 is Rs.93,472/-, for 2004-05 is Rs. Nil and for the year 2005-06 (upto June 2005) is Rs.3,78,136/-, as the respondent had not paid the duty for the clearance value of their own goods and clearance value of the loan licensee after crossing exemption limit. In the instant case, the date of delivery of show cause notice is 25.07.2006. Therefore, the period within limitation for re-quantification of demand, as per CESTAT's order, comes from 26.07.2005 to 31.03.2006. The disputed demand period of the instant case is pertaining the year 2001-02, 2002-03, 2003-04, 2004-05 and 2005-06 (upto June 2005). In the circumstance, while following the Hon'ble CESTAT's order, I observe that the entire demand pertains for the extended period and are time barred. Looking into the said facts, the adjudicating authority has correctly dropped



the demand by holding that there is no demand or short paid for normal period i.e 26.07.2005 to 31.03.2006. In view of above, I find that the department's contention that the adjudicating authority has failed to re-quantify the duty for the relevant period according to the date of filing of return is not sustainable and not correct.

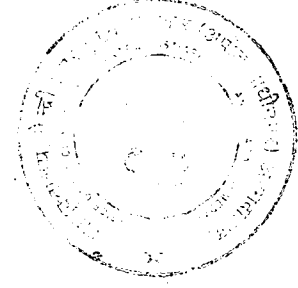
8. In view of above discussion, I reject the appeal filed by the department. The appeal filed by the department stands disposed of in above terms.

उमाशंकर
(उमा शंकर)
आयुक्त (अपील्स)

Date: /12/2018

Attested

20/12/18
(Mohan V.V)
Superintendent (Appeal)
Central Excise, Ahmedabad



BY R.P.A.D.

To,
M/s Gujarat Terce Laboratories Ltd,
122/2, Bileshwarpura, Taluka Kalol

Copy to:

1. The Chief Commissioner of Central GST Zone, Ahmedabad.
2. The Commissioner of Central GST, Gandhinagar.
3. The Additional Commissioner(Systems) Central GST, Gandhinagar
4. The A.C. / D.C., Central Excise Division: Kadi, Gandhinagar
5. Guard file
6. P. A.