केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
वस्तु एवं सेवा कर भवन, सातवीं मंजिल,पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015
GST Building, 7th Floor,, Near Polytechnic, Ambavadi, Ahmedabad-380015

सत्यमेव जयते

☎ 079-26305065 टेलेफैक्स : 079 - 26305136

9977/09975

क फाइल संख्या :File No : **V2/28/RA/GNR/2018-19**

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-191-18-19**

दिनाँक Date :**13-03-2019** जारी करने की तारीख Date of Issue: 4/4/2019 C.file

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

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

ग **अपर** आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश **: 08/AC/CGST/18-19** दिनाँक : **25-05-2018** से सृजित

Arising out of Order-in-Original: **08/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. Sarathi 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।

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 पूवोक्त 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 प्रकिया 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

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 इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि–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 beer a court fee stamp of Rs.6.50 paisa 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 in 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 होगे।

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/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.

ORDER-IN-APPEAL

This appeal has been by the Assistant Commissioner of CGST & CEx, Kalol Division, Gandhinagar Commissionerate (*hereinafter referred to as 'the department'*) against the Order-in-OriginalNo.08/AC/CGST/18-19 dated 25/29.05.2018 (*hereinafter referred to as "the impugned order"*) passed by the Assistant Commissioner of Central GST, Kalol Division, Gandhinagar (*hereinafter referred to as "the adjudicating authority"*) in respect of M/s Sarathi Pharmaceuticals Ltd, Plot No.536, Rakanpur, Taluka-Kalol, Dist Gandhinagar [*hereinafter referred to as "the respondent"*]

2. Briefly stated, the respondent was engaged in the manufacture of P.P. Medicines falling under chapter sub-heading 3003 of the first schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). They were availing value based SSI exemption up to clearance value of Rs.150 Lakhs under Notification No. 08/2003 dated 01/03/2003 (as amended) (hereinafter referred to as the 'SSI notification') for clearance of its own goods, whereas the goods manufactured for loan licensees under various brand names not belonging to the appellant, was cleared on payment of Central Excise duty @ 16% from the first clearance in a financial year. The factory of the appellant was falling within **'rural area',** as defined in paragraph 4 of the SSI notification. The exemption contained in the SSI notification did not apply to specified goods bearing a brand name or trade name whether registered or not, of another person, except in cases where such branded specified goods were manufactured in a factory located in a **'rural area'**. It appeared that the respondent was liable to take into account also the value of branded goods for the purpose of determining the exemption limit of aggregate of first clearance value not exceeding 150 Lakhs Rupees made on or after 1st April in a financial year and also for the purpose of determining the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories, or from a factory by one or more manufacturers not exceeding 400 Lakhs Rupees in the preceding financial year. As the respondent had failed to add the value of branded goods for the purpose of determining the said aggregate values of clearances in a financial year as well as the preceding financial year, a show cause notice dated 11.12.2006, covering the period from 2001-02 to 2005-06, for denying the benefit of SSI notification and demanding Rs.19,41,604/- with interest and also for imposition of penalty under Section 11 AC of the Central Excise Act, 1944 was issued.

2.1 Meanwhile, in an identical matter in respect of M/s Rhombus Pharma Pvt Ltd, Commissioner, Central Excise, Ahmedabad-II, vide OIO dated 20.04.2007 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, the above said show cause notice dated 11.12.2006 was transferred into call book. However, the said show cause notice was retrieved from call book on 28.09.2009. The CESTAT, vide order No.A/11397-11397/2015 dated 08.10.2015 has rejected the department appeal and concluded that the demand of duty for the extended

period of limitation cannot be sustained and uphold the duty with interest for the normal period of limitation.

2.2 In view of above referred CESTAT's order dated 08.10.2015 and CESTAT's order No.A/1330134/2009 dated 07.01.2009, in case of Pharmanza India, 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, the adjudicating authority has decided the show cause notice, vide impugned order by dropping the entire demand as time barred.

3. Being aggrieved, the department has filed the instant appeal mainly on the grounds that the adjudicating authority while passing the impugned order has committed error in re-quantification of the demand in much as the adjudicating authority has not given any basis on which the said demand has been re-quantified; that the impugned order does not contain any detailed calculation for the amount confirmed and adjusted and serve to be remanded back to the adjudicating authority with a direction to go through the entire records and decide the issue afresh.

3. Personal hearing in the appeal was held on 05.03.2019. Shri S.J.Vyas, advocate appeared for the same and explained the case.

6. At the outset, I find that the adjudicating authority has decided the instant issue on the basis of the Hon'ble CESTAT's order No.A/11396-11397/2015 dated 08.10.2015 in respect of M/s Rhombus Pharma Pvt Ltd and also decision of M/s Pharmanza India reported in 2009 (237) ELT 488. 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. The Hon'ble CESTAT has clearly held 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*" and "*duty paid on the clearances, which the Revenue has contended to be exempted, should be considered as deposit and the said duty is required to be adjusted against the duty now being demanded from the appellant*" and *such re-quantification exercise is to be done only for the period within limitation.*"

7. I find that the adjudicating authority has re-quantified the duty vide para 22.13 and 22.14 of the impugned order. He stated that "....In the instant case the date of delivery of show cause notice is 18.12.2006 i.e considering the period within limitation for re-quantification is 19.12.2005 to 31.03.2006. In the instant case, normal period covers the month of December 2005, January 2006, February 2006 and March 2006 while considering the delivery of show cause notice as 18.12.2006. The demand raised vide the show cause notice for the period from 08.07.2005 to

November 2005 for amounting to Rs.7,63,7572/- as the said assessee had not paid the Central Excise duty for the clearance of their own goods after crossisng the exemption limit while considering the clearance value of their own goods and clearance value of the loan licensee goods their brand name and the said period is time bar. They have started to pay Central Excise duty from December 2005 as they have crossed exemption limit of their own goods. I find that the adjustment of C Excise duty on clearance pertaining to loan licensee before attaining 1 crore is required to be adjust while demanding the duty on own clearance, in the instant case, question of adjust of duty for the clearance value of loan licensee does not arise. The demand of Rs.9,77,360/- for the extended period i.e for the period 2001-02, 2002-03, 2004-04, 2005-05 and 01.04.2005 to November 2005 are time bar. Following the Hon'ble CESTAT order, the entire demand is time bar."

8. In the instant issue, I find that as per CESTAT's order supra, the duty paid on the clearances, which the Revenue has contended to be exempted, should be considered as deposit and the said duty is required to be adjusted against the duty now being demanded from the appellant and such re-quantification exercise is to be done only for the period within limitation. In the instant case, the appellant has crossed the threshold exemption limit of Rs. One crore on 08.07.2005. Accordingly, no duty was required to be paid by the appellant upto 07.07.2005 and from 08.07. 2005 onwards, they were required to pay duty on their own clearances as well as those of the Loan Licensee. However, the appellant had discharged duty in respect of clearance of Loan Licensee from April 2005 onwards and as per Hon'ble CESTAT's order supra, the duty which has already been paid on such clearances, which the department has contended to be exempted, should be considered as deposit. In the circumstances, whatever duty has already been paid by the appellant from April 2005 to till crossing the threshold limit should be taken into consideration while adjusting the duty demanded. I find that that in the instant case, the demand comes to Rs. Rs.9,77,360/- for the entire period from 2001-02 to 2005-06 and out of the said amount Rs.7,63,572/- pertaining to the period of 2005-06 i.e from 08.07.20105 to November 2005 (after the crossing clearance value of Rs.1 crore considering only their own clearance). Since the show cause notice was issued on 18.12.2006 and no demand is within the limitation of period, question of adjustment of duty does not arise as held by the adjudicating authority. In the circumstances, by following the ratio of the decision of the Hon'ble Tribunal and the duty particulars paid by the appellant as has been observed above, I find that the adjudicating authority has correctly dropped the proceedings initiated in the show cause notice. Therefore, the department appeal fails.

10. In view of above discussion, I reject the appeal filed by the department. The appeal stands disposed of accordingly.

(उमा शंकर)
आयुक्त (अपील्स)

Date: 03/2019

Attested

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

BY R.P.A.D.

To,

The Assistant Commissioner of CGST & CEx
Kalol division, Gandhinagar Commissionerate.

M/s Sarathi Pharmaceuticals Ltd,
Plot No.536, Rakanpur, Taluka-Kalol, Dist Gandhinagar

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. Guard file
5. P.A.