

	केंद्रीयकर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
सत्यमेव जयते	वस्तु एवं सेवा कर भवन	GST Building-7 <sup>th</sup> Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015	
	सातवीं मंजिल पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	380015	
 079-26305065			टेलिफैक्स : 079-26305136

6547/0 6551

क फाइल संख्या : File No : V2/109/GNR/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-98-18-19

दिनांक Date : 14-09-2018 जारी करने की तारीख Date of Issue: 22/10/2018

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

C. file

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :  
06/AC/CGST/17-18 दिनांक : 29-05-2018 से सृजित

Arising out of Order-in-Original: 06/AC/CGST/17-18, Date: 29-05-2018 Issued by:  
Assistant Commissioner, CGST, Div:Kadi, Gandhinagar Commissionerate,  
Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

**M/s. Elikan Pharma 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 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, 4<sup>th</sup> 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 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:-

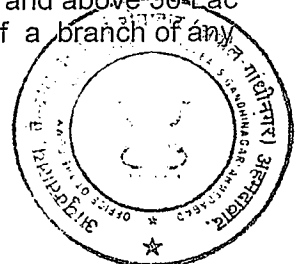
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी 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 सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ 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 वहाँ 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 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 अनुसूची-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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 63 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 अर्जी एवं अपील को लागू नहीं होगा।

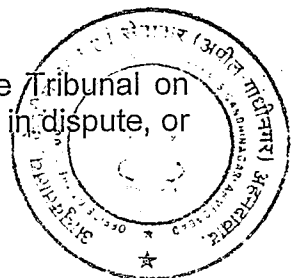
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 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।

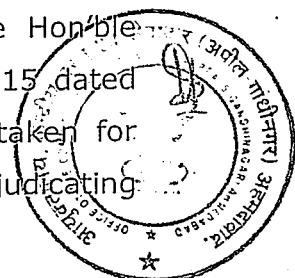
(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

This appeal has been by M/s Elikem Pharma Ltd., Plot No.816/1, Rakanpur, Tal. Kalol, Dist Gandhinagar (*hereinafter referred to as 'the appellant'*) against the Order-in-Original No.06/AC/CGST/17-18 dated 29.05.2018 (*hereinafter referred to as 'the impugned order'*) passed by the Assistant Commissioner of Central GST, Kadi Division, Gandhinagar (*hereinafter referred to as 'the adjudicating authority'*)

2. Briefly stated, the appellant was holding Central Excise registration No. AAACE6397DXM001 and 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). The appellant was 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 appellant was availing CENVAT credit of duty paid on inputs used in the branded goods manufactured on behalf of loan licensees and cleared on payment of duty from first clearance in a financial year, whereas in respect of its own manufactured goods, CENVAT credit was availed after crossing the SSI exemption limit of Rs.150 Lakhs aggregate clearance value 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 appellant 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 1<sup>st</sup> 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 appellant 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.14,43,088/- with interest and also proposes imposition of penalty under Section 11 AC of the Central Excise Act, 1944 was issued. The said show cause notice was transferred into call book as identical issue dropped by the jurisdictional Commissioner has challenged before the Hon'ble CESTAT. On the basis of Hon'ble Tribunal's Order No.A/11396-11397/2015 dated 08.10.2015, the show cause notice was retrieved from call book and taken for decision. Vide the impugned order the issue was adjudicated by the adjudicating



authority [i] by dropping the demand of Rs.11,72,438/- for the extended period upto 30.11.2005 and confirmed the demand of Rs.2,70,650/- for the period of normal period from December 2005 to March 2006 with interest. The adjudicating has contended that the appellant is not entitled for adjustment of any amount as they have already crossed the exemption limit on 14.6.2005. He also imposed penalty of Rs.50,000/- on the appellant.

3. Being aggrieved, the appellant has filed the instant appeal mainly on the grounds that:

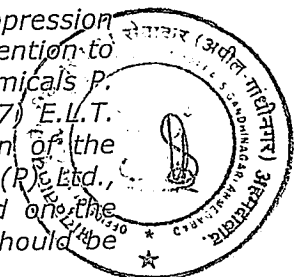
- The adjudicating authority has not followed the CESTAT order under which it has been held that the duty paid on the clearance which the Revenue has contended to be exempted, should be considered as deposit and said duty is required to be adjusted against the duty now being demanded from the appellant; that the adjudicating authority has conveniently ignored the said para and quantified the duty only for the period within limitation and not considered the whole duty paid on the branded goods on which no duty was required to be paid upto the aggregate value of clearance of rupees one crore as contended by the revenue.
- the appellant had already paid more duty than the duty demanded, therefore, the impugned order is required to be set aside.

3. Personal hearing in the appeal was held on 12.09.2018. Shri M.H.Ravel, Consultant appeared for the same and reiterated the grounds of appeal and submitted additional submission.

4. I have gone through the facts of the case and submissions made in the appeal memorandum. On perusal of records, I observe that the instant issue arises due to CESTAT's Order No. A/11505-11506/2015 dated 02/09/2015 in case of M/s Kosha Laboratories vs Commissioner of Central Excise, Ahmedabad-III and the various OIA passed by the Commissioner (Appeals), by remanding the case to original adjudicating authority for deciding the case according to the said CESTAT order. The operative part of CESTAT's is reproduced as follows:

*"6. We find that the Tribunal in the case of Pharmanza (India) (supra) on the identical situation observed that the duty paid on the branded goods is more than duty now being demanded, should neutralize entire demand required to be verified and matter was remanded. The relevant portion of the said decision is reproduced below:-*

*3. Learned advocate has assailed the impugned orders on limitation as also on merit. As regards limitation, he submits that the reasoning adopted by Commissioner that the appellants has suppressed the fact that their factory was located in rural area, cannot be upheld inasmuch as the said fact is not capable of being suppressed. Revenue was very well aware of location of their factory and as such, it cannot be said that there was any suppression on their part. Arguing on merit, learned advocate has drawn our attention to the earlier order passed by the Tribunal in case of M/s. Kline Chemicals P. Ltd. (Order No. A/1460/WZB/AHD/2008, dt. 29-7-08), [2009 (237) E.L.T. 405 (T)] wherein after taking note of the Larger Bench decision of the Tribunal in case of CCE, Coimbatore v. M/s. Marutham Textiles (R) Ltd., 2003 (153) E.L.T. 219 (Tri.-LB), it was held that the duty paid on the clearances, which the Revenue has contended to be exempted, should be*



*considered as deposit and said duty is required to be adjusted against the duty now being demanded from the appellant.*

*4. By following the ratio of above decision, we agree with the learned advocate. Admittedly, the branded goods have been cleared on payment of duty, which according to Revenue should not have the paid duty. As such, duty already paid on such branded goods is required to be adjusted against the duty now being demanded from the appellant. It is the appellant's contention that the duty paid on the branded goods is much more than the duty now being demanded and would neutralize the entire demand, and is required to be verified. For the said purpose, we remand the matter to the original adjudicating authority. We also find favour with the appellant's plea of limitation, we direct the Commissioner that such re-quantification exercise is to be done only for the period within limitation.*

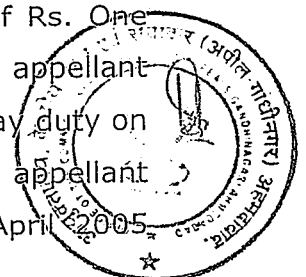
*5. Both the appeals are disposed off in above manner*

*7. In the case of Pharmedia (India) (supra), the Tribunal dropped the demand for the extended period of limitation on the identical situation. Hence, we do not find any merit in the appeal filed by the revenue. As there is no suppression of fact, penalty imposed under Section 11AC cannot be sustained.*

*8. In view of the above discussion, we remand the matter to Adjudicating Authority to examine whether the duty being demanded upheld by Commissioner (Appeals) would be neutralized against the amount of duty paid by them. The appeal filed by revenue is rejected. The appeal filed by the assessee is disposed of in above terms."*

5. I observe that the adjudicating authority has decided the instant issue on the basis of CESTAT's above referred order and dropped the demand of Rs. 11,72,438/- which was demanded by invoking the extended period upto 30.11.2005 and confirmed the demand of Rs. 2,70,650/- for the period of normal period from December 2005 to March 2006. The adjudicating has further held that the appellant is not entitled for adjustment of any amount as they have already crossed the exemption limit on 21.09.2005. The appellant has contended that the order of the adjudicating authority is not correct and not as per guidelines of the above referred CESTAT's order.

6. The contention of the appellant appears to be correct and acceptable, according to the CESTAT's order *supra*. On perusal of the impugned order, I observe that the adjudicating authority has not allowed adjustment of any duty for the clearances upto 21.09.2005 (i.e the date on which the threshold exemption limit was crossed) during the limitation period of 2005-06 without considering the duty payment made by the appellant from April 2005. The Hon'ble CESTAT has clearly held that "*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 21.09.2005. Accordingly, no duty was required to be paid by the appellant upto 21.09.2005 and from 22.09. 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, 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. The appellant has submitted that upto 21.09.2005 of the said limitation period, they had already paid an amount of duty more than the duty confirmed by the adjudicating authority pertains to Loan Licensee. In the circumstances, no demand of duty exists for the relevant period of limitation.

8. In view of above discussion, I am of the opinion that the matter needs to be verified by the adjudicating authority according to the duty particulars paid by the appellant from April 2005 onwards and adjustment needs to be made accordingly, as has been observed supra. Therefore, I remand the case to the adjudicating authority, in view of foregoing discussions.

9. Further, as regards imposition of penalty, I observe that the adjudicating authority has imposed penalty of Rs.50,000/- under Rule 25 of Central Excise Rules, 2002. Since, the issue involved in the appeal is under litigation since 2005, I do not find any merit to impose any penalty in the matter. Therefore, the penalty imposed is set aside.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है. The appeal filed by the appellant stands disposed of in above terms.

*उमा शंकर*

(उमा शंकर)  
आयुक्त (अपील्स)

Date: /09/2018

Attested

*Mohan V.V*  
(Mohan V.V)  
Superintendent (Appeal)  
Central Excise, Ahmedabad

BY R.P.A.D.

To,  
M/s Elikem Pharma Ltd.,  
Plot No.816/1, Rakanpur,  
Tal. 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. The A.C. / D.C., Central Excise Division: Kadi, Gandhinagar
5. Guard file
6. P. A.

