



**आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),**

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलिफैक्स 07926305136



DIN : 20220964SW0000288864

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/53/2022 / 3474-78
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-46/2022-23**
दिनांक Date : **29-08-2022** जारी करने की तारीख Date of Issue 02.09.2022
आयुक्त (अपील) द्वारा पारित.
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of OIO No. **AHM-CEX-003-JC-MT-009-21-22** दिनांक: **14.12.2021** passed by Joint
Commissioner, CGST & Central Excise, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- M/s Jaywin Remedies Pvt Ltd**
Plot No. 122/1, Ravi Industrial Estate,
Billeshwarpura, Chhatral,
Kalol, Gandhinagar

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 अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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 हानिकार खाने 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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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।

(c) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो 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.

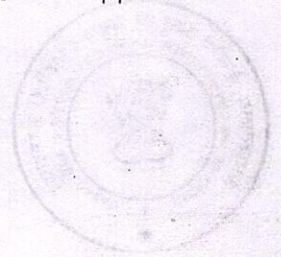
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

(क) 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 2ndमाला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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 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.

- (68) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

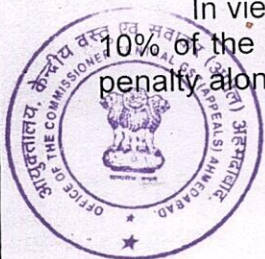
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (clxxxvii) amount determined under Section 11 D;
- (clxxxviii) amount of erroneous Cenvat Credit taken;
- (clxxxix) amount payable under Rule 6 of the Cenvat Credit Rules.

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।

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."



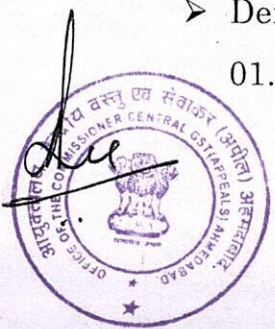
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Jaywin Remedies Pvt. Ltd., Plot No.122/1, Ravi Industrial Estate, Billeshwarpura, Chhatral, Taluka: Kalol, District : Gandhinagar (hereinafter referred to as the appellant) against Order in Original No. AHM-CEX-003-JC-MT-009-21-22 dated 14.12.2021 [hereinafter referred to as "*impugned order*"] passed by the Joint Commissioner, CGST, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Central Excise Registration No. AAACJ7303GXM001 and engaged in manufacture of Medicaments falling under Chapter 30 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant were engaged in the manufacture of Medicaments on their own account as well as for various loan licensees under different brand names. They were availing the benefit of value based exemption under Notification No.8/2003-CE dated 01.03.2003 during F.Y. 2007-08 for the clearances of their own goods. It appeared that the appellant had, during F.Y. 2006-07, cleared their own goods valued at Rs.3,61,46,641/- and cleared goods valued at Rs.3,15,81,542/- on behalf of their different loan licensees. The total value of clearances amounted to Rs.6,77,28,183/- and thereby they had crossed the eligibility limit of Rs.400 lakhs during F.Y. 2006-07. The appellant had paid full duty on the clearances of branded goods manufactured by them on behalf of the loan licensees. The appellant, however, did not account for the value of such branded goods while computing the aggregate limit of Rs.400 lakhs for availing the benefit of Notification No.8/2003-CE dated 01.03.2003 for F.Y. 2007-08. They had accordingly, wrongly availed exemption during F.Y.2007-08 and not paid central excise duty in respect of their own clearances.

3. Subsequently, the appellant was issued Show Cause Notice vide F.No. V.30/15-64/Dem/OA/2007-08 dated 29.04.2008 wherein it was proposed to :

- Deny the benefit of exemption under Notification No.8/2003-CE dated 01.03.2003 for F.Y.2007-08.



- Recover the Central Excise duty amounting to Rs.24,71,178/- under Section 11A (1) of the Central Excise Act, 1994.
- Charge interest under Section 11AB of the Central Excise Act, 1944.
- Impose penalty under Rule 25 of the Central Excise Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

4. The said SCN was adjudicated vide OIO No. 05/ADC(KA)/2009 dated 10.02.2009 wherein the demand for central excise duty amounting to Rs.24,71,178/- was confirmed along with interest. Penalty of Rs.1,00,000/- was imposed. Being aggrieved, the appellant filed appeal before the Commissioner (Appeals), Ahmedabad, who vide OIA NO. AHM-EXCUS-003-APP-07-17-18 dated 25.05.2017 remanded the matter to the adjudicating authority to examine the issue in light of the judgment of the Hon'ble Tribunal in the case of Kosha Laboratories.

5. In the remand proceedings, the case was adjudicated vide the impugned order wherein the demand of central excise duty amounting to Rs.16,33,769/- was confirmed along with interest. Penalty of Rs.1,00,000/- was imposed under Rule 25 of the Central Excise Rules, 204 read with Section 11AC of the Central Excise Act, 1944.

6. Being aggrieved with the impugned order, the appellant has filed the present appeal on 27.01.2022. On scrutiny of the appeal papers submitted by the appellant, it was observed that they had not submitted copy of the pre-deposit challan i.e. DRC-03. Therefore, the appellant were called upon vide letter dated 08.02.2022 to submit a copy of the pre-deposit challan. However, the appellant did not respond to the said communication. They were, therefore, again asked vide letter dated 24.02.2022 to submit copy of the pre-deposit challan. The appellant on 03.03.2022, without any covering letter, submitted a copy of the Goods and Service Tax Payment Receipt dated 25.01.2022. However, as the same was merely a receipt for deposit of the amount in the Bank by the appellant, they were again called upon vide letters dated. 21.03.2022 and 29.06.2022 to submit copy of the pre-deposit challan. The appellant has neither responded to the communications nor have they submitted copy of the pre-deposit challan.



7. The pre-deposit of certain percentage of duty demanded or penalty imposed before filing appeal is required in terms of Section 35F of the Central Excise Act, 1944, which is reproduced as below :

“The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,-

- (i) Under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Principal Commissioner of Central Excise of Commissioner of Central Excise:.”

7.1 It is clear from the provisions of Section 35F (i) that the pre-deposit of 7.5% of the duty or penalty disputed has to be made by the appellant. In the present case, it is seen that the appellant have merely submitted a copy of the Receipt of the amount deposited by them in the bank. As the amount has been deposited in the Bank under GST, it would be relevant to refer to the provisions of Rule 142(2) of the Goods and Services Tax Rules, 2017, which is reproduced below :

“Where, before the service of notice of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act he shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgment, accepting the payment made by the said person in **FORM GST DRC-04.**”

7.2 However, the appellant has in the present appeal not submitted the DRC-03 and despite being called upon on three occasions, the appellant failed to submit copy of the DRC-03 evidencing payment of the pre-deposit. Mere payment of the amount in the Bank, without debit of the same and without generating DRC-03, does not amount to payment of pre-deposit.

8. In terms of Section 35F of the Central Excise Act, 1944, the Tribunal or Commissioner (Appeals), as the case may be, shall not entertain any appeal unless the appellant has deposited 7.5% of the duty, in case where duty or duty and penalty are in dispute or penalty, where the penalty is in dispute.



9. Since the appellant had not furnished proof of their having made the pre-deposit of 7.5% of the penalty disputed, the appeal filed by the appellant is dismissed for non-compliance of the provisions of Section 35F of the Central Excise Act, 1944.

10. 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.

(Signature)
Akhilesh Kumar } 29th August, 2022

Commissioner (Appeals)

Date: 29.08.2022.

Attested:

(Signature)
(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Jaywin Remedies Pvt. Ltd.,
Plot No.122/1, Ravi Industrial Estate,
Billeshwarpura, Chhatral,
Taluka : Kalol,
District : Gandhinagar

Appellant

The Joint Commissioner,
CGST & Central Excise,
Commissionerate : Gandhinagar

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.
(for uploading the OIA)

- ~~4.~~ Guard File.
5. P.A. File.

