



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20231264SW0000444F52

(क)	फाइल संख्या / File No.	GAPPL/COM/CEXP/211/2023-APPEAL / 1098-9102
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-150/2023-24 and 28.11.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	05.12.2023
(ङ)	Arising out of Order-In-Original No. KLL DIV/EX/YOGENDRA SINGH RAWAT/202/22-23 dated 28.02.2023 passed by the Assistant Commissioner, CGST, Division -Kalol, Commissionerate - Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Theo Pharma Pvt. Ltd., Plot No. 819/C, Rakanpur, Taluka-Kalol, Gandhinagar, Gujarat

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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:-

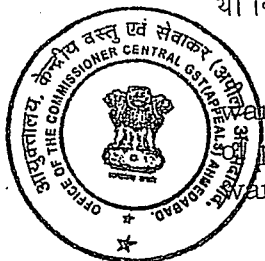
Revision application to Government of India:

(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 :-

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 :-

(क) 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।

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।

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।

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

(घ) 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 हों।

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.

(2) 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 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.

(3) 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 :-

(2) उक्तलिखित परिच्छेद 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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 above para.

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 / Fund 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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:

- (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.

(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।

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, penalty, where penalty alone is in dispute."



ORDER IN APPEAL

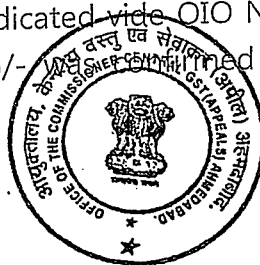
M/s Theo Pharma Pvt. Ltd, Plot No.819/C, Rakanpur, Tai-Kaloi, District Gandhinagar (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. KLL DIV/EX/YOGENDRA SINGH RAWAT/202/2022-23 dated 28.02.2023 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-Kalol, Gandhinagar Commissionerate (hereinafter referred to as '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant was having Central Excise Registration No.AACT7013PXM001 and was engaged in the manufacture of PP Medicine and were also manufacturing said product on behalf of other manufacturer under Loan License which were classifiable under Chapter 30 of the First Schedule to the Central Excise Tariff Act, 1985. They were availing SSI exemption under Notification No. 8/2003-CT dated 01.03.2003 for their own goods up to first aggregate clearance value of Rs.100 Lakhs in the F.Y 2006-2007 & upto Rs.150 Lakhs in the F.Y 2007-2008. For the goods manufactured on loan license basis after crossing threshold exemption limit of Rs.100 Lakhs/150 Lakhs they paid central excise duty and were availing Cenvat credit benefit on the inputs used therein.

2.1 As the appellant was located in rural area, it appeared that the appellant was liable to take into account also the value of branded goods clearances for the purpose of determining the exemption limit of aggregate of first clearance value not exceeding Rs.100 lakhs/150 lakhs and also for the purpose of determining the aggregate value of clearance 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 Rs.400 lakhs in the preceding financial year. On clubbing the value of clearances of the appellant on goods and value of clearance made on behalf of loan licensees it was noticed that the appellant had crossed the exemption limit of Rs.100 lakhs for the F.Y. 2006-07 on 21.08.2006 but continued to avail the SSI exemption benefit wrongly. The differential clearance value on which inadmissible exemption availed was worked out to Rs.17,58,366/- for the F.Y. 2006-07 and Central Excise duty amounting to Rs.2,86,966/- @ 16% was found to be short paid. For the subsequent year, it was noticed that the appellant has crossed the exemption limit of Rs.150 lakhs on 16.10.2007 but continued to avail the inadmissible exemption. Hence, they were required to pay duty on the differential value which arrived at Rs.16,60,187/- on which central excise duty of Rs. 4,37,912/- was required to be paid. It appeared that the appellant has contravened the provisions of Rule 4,6,8,10 & 11 of the CER, 1944 read with Notification No.08/2003 dated 01.03.2003.

2.2 Two SCNs were therefore issued to the appellant. A SCN no.V.30/03-14/SCN/2007-08 dated 21.05.2007 was issued for the period 2006-07, proposing duty demand amounting to Rs.2,86,966/-. Another SCN No.30/03-41/SCN/08-09 dated 15.10.2008 was issued for the period 2007-08 involving duty amount of Rs.4,37,912/-. The demand in both the SCNs proposed demand u/s 11A, interest u/s 11AB and penalty u/s 11AC.

2.3 The notice dated 21.05.2007 was adjudicated vide OIO No.300/D/2007-08 dated 04.03.2008, wherein the duty of Rs.2,86,966/- was confirmed alongwith interest and



penalty. The SCN dated 15.10.2008 was adjudicated vide OIO No.39/D2008-09 dated 24.3.2008, wherein out of total demand of Rs.4,37,912/-, the duty demand of Rs. 3,83,903/- was confirmed alongwith interest and penalty and the demand of Rs.54,009/- was dropped. Being aggrieved by the aforesaid O-I-Os the appellant preferred appeals. The Commissioner (A) vide OIA No.AHM-EXCUS-003-APP-54-17-18 and OIA No.AHM-EXCUS-003-APP-55-17-18 both dated 25.07.2017, remanded back the cases to adjudicating authority to examine the issue in light of Hon'ble Tribunal's decision passed in the case of M/s. Kosha Laboratories (Order No. A/11505-11506/2015 dated 02.09.2015) and to pass a reasoned order.

3. In the remand proceedings, the appellant contended that they have paid duty on the branded goods which is exempted and if the assessment is re-opened, the central excise duty paid on such branded goods should be treated as deposit and should be adjusted against the outstanding demands. After considering the duty payments made by the appellant on branded goods, the adjudicating authority concluded that the differential duty liability for the F.Y. 2006-07 shall be **Rs.4/-** and for the F.Y. 2007-08, it shall be **Rs.1,78,688/-**. He vide the impugned order confirmed the said duty amounts alongwith interest and penalty.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below:-

- The adjudicating authority has travelled beyond the specific direction of Honorable Commissioner (A) and has erred in deciding the entire demand a fresh as there was very specific direction of the Honorable Commissioner Appeals under para-8 of the Order-in-Appeal to verify the present case as per the ratio of Order No. A/11505-11506/2015 Dt. 02.09.2015 in the matter of M/s. Kosha Laboratories Vs. Commr of CE, Ahmedabad-III, passed by CESTAT.
- The above stated order of M/s. Kosha Laboratories held that any excess duty paid under loan license shall be allowed to be adjusted against the demand raised and accordingly case was disposed of.
- The adjudicating authority inadvertently re-calculated the entire demand of Rs.4/- for the F.Y. 2006-07 and Rs.1,78,688/- for the F.Y. 2007-08. They claim that the demand of Rs.4/- of 2006-07 was already dropped and for F.Y. 2007-08, Rs.3,27,727/- pertained to exempted supply, Rs.1,24,679/- was erroneously re-calculated @16% duty plus Cess @ 3% for the month of March, 2008 which should have been calculated @8% plus Cess@3%. This exemption was already allowed in previous order for the month of March, 2008. The adjudicating authority ignored the rate of reduction provided under Notification no.04/2008-CE dated 01.03.2008.
- They on the above grounds requested to set-aside the impugned order.

4. Personal hearing in the case was held on 12.10.2023. Shri Pravin Dhandharia, Chartered Accountant, appeared and reiterated the submissions made in appeal memorandum and requested to set-aside the impugned order.



5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the appeal memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the service tax demand of Rs.4/- and Rs. 1,78,688/- along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period F.Y 2006-07 and 2007-08.

5.1 The appellant have contended that the adjudicating authority in the impugned order has travelled beyond the remand proceedings by:-

- a) Deciding the entire demand for the F.Y. 2006-07 and F.Y. 2007-08 afresh, this is against the direction of the Commissioner (A) while remanding the case.
- b) Supply value of Rs.3,27,727/- related to goods exempted in terms of Notification No.04/2006-CE dated 01.03.2006 was already dropped by the earlier adjudicating authority. Hence, re-considering this value was going beyond the directions of the Commissioner (A).
- c) During the month of March, 2008, the rate of excise duty was reduced from 16% to 8% and the appellant has discharged the same. But the adjudicating authority in the remand proceeding has confirmed the demand @16% against the appellant, thereby travelling beyond the directions of the Commissioner (A).

5.2 The Commissioner (A) remanded the matter with the direction to examine the issue in line with the ratio given by Hon'ble Tribunal in the case of M/s. Kosha Laboratories. In said decision, Hon'ble Tribunal held that the duty already paid on the branded goods is required to be adjusted against the duty demanded from the appellant. So, on point (a) above, I do not find any violation of the remand directives as the demand was required to be examined and re-determined after considering the duty paid clearances made by the appellant.

5.3 It is observed that the appellant vide letter dated 24.09.2018, provided the worksheets in the form of Annexure- A & B showing the details of clearance value & Excise duty payment made by them during the F.Y. 2006-07 and F.Y. 2007-08. The adjudicating authority for the F.Y. 2006-07 took total clearance value of Rs.1,80,17,615 /- after granting SSI exemption of Rs.100 lakhs, the clearance value arrived was Rs.80,17,615/- on which @16.32% (duty + cess) was demanded and duty of Rs.13,08,475/- was arrived. But since the appellant has already paid Rs.13,08,471/- the same was adjusted and differential demand of only Rs.4/- was confirmed. As in the earlier order no reduction was granted by the earlier adjudicating authority, I, therefore find that there is no discrepancy in the above demand.

5.4 For the F.Y. 2007-08, in the impugned order, the adjudicating authority took total clearance value of Rs.2,64,76,253/- after granting SSI exemption of Rs.150 lakhs arrived at the clearance value of Rs.1,14,76,253/- on which @16.48% (duty + cess) was demanded and duty of Rs.18,91,286/- was arrived. Since the appellant has already



paid Rs.17,12,598/- on branded goods, the same was adjusted and differential demand of only Rs.1,78,688/- was confirmed. The appellant however claim that the supply value of Rs.3,27,727/- related to goods exempted in terms of Notification No.04/2006-CE dated 01.03.2006 which was already dropped by the earlier adjudicating authority was again counted in the remand proceedings, which is not correct. I agree with the above contention and find that in the remand proceeding, the adjudicating authority was required to reduce such exempted clearances also while re-opening the assessment. However, the adjudicating authority in the remand proceeding has ignored this aspect.

5.5 Further, the appellant have also claimed that in March, 2008, they discharged the duty at reduced rate i.e. @ 8% but the adjudicating authority has confirmed the demand @16%. I find that this contention was not raised by the appellant before the earlier adjudicating authority or before Hon'ble Tribunal. Furthermore, the appellant's claim is not support by any documentary evidence and calculation. However, in the interest of natural justice, I find that the adjudicating authority may also examine this aspect. The appellant shall also submit the required data alongwith supporting documents for determination of correct demand.

6. In view of the above findings, I find that the demand pertaining to the F.Y. 2007-08 needs to be remanded to the adjudicating authority for determining the duty liability on the limited findings discussed at para-5.4 & 5.5 above.

7. Accordingly, I set-aside the impugned order and remand the matter back to adjudicating authority for deciding the demand pertaining to the F.Y. 2007-08 specifically dealing with the contentions raised by the appellant vis-à-vis the documentary evidences.

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

(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date: 21.11.2023

Attested

रेखा

(रेखा नायर)

अधीक्षक (अपील्स)

केंद्रीय जीटी.एस., अहमदाबाद

By RPAD/SPEED POST

To,

M/s Theo Pharma Pvt. Ltd,

Plot No.819/C, Rakanpur,

Tal-Kalol, District Gandhinagar

The Assistant Commissioner



Appellant

Respondent

CGST, Division-Kalol,
Gandhinagar

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (System), CGST, Appeal, Ahmedabad .
(For uploading the OIA)
4. Guard File.

