



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,  
Office of the Commissioner (Appeal),  
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
Central GST, Appeal Commissionerate, Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
टैलेफैक्स 07926305065- टैलेफैक्स 07926305136



DIN:20230464SW0000666EB4

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/8/2022-APPEAL / 246-250
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-222/2022-23  
दिनांक Date : 31-03-2023 जारी करने की तारीख Date of Issue 05.04.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 09/Refund/2022/AC/KMV दिनांक: 31.05.2022, issued  
by Assistant/Deputy Commissioner, Division-IV, CGST, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Zydus Lifesciences Ltd.,  
(Formerly Known as M/s. Cadila Healthcare Ltd.),  
Plot No. 417-419-420( Part), N.H 8A,  
Sarkhej Bavla Highway, Village- Moraiya,  
Sanand, Ahmedabad

2. Respondent

Assistant/Deputy Commissioner, CGST, Division-IV, Ahmedabad North , 2<sup>nd</sup>  
Floor, Gokuldharm Arcade, Sarkhej-Sanand, Ahmedabad - 382210

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 अतल 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, संराद 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, 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 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.



(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 मामले 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 उभूटी 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 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-बी/35-इ के अंतर्गत:-

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

(क) उक्तालिखित 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 2<sup>न</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 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 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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर 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:

- (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.

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. Zydus Lifesciences Ltd., (formerly known as M/s. Cadila Healthcare Ltd.) located at Plot No, 417-419-420 (Part), N.H. 8A, Sarkhej Bavla Highway, Village- Moraiya, Sanand, Ahmedabad (hereinafter referred to as '*the appellant*') against Order-in-Original No.09/Refund/2022/AC/KMV dated 31.05.2022 (for brevity referred to as "*the impugned order*") passed by the Assistant Commissioner, CGST & Central Excise, Division-IV, Ahmedabad North (for short referred to as the "refund sanctioning authority"). The appellant are holding ECC No. AAACC6253GXM004 and are engaged in the manufacture of pharmaceutical products, which they have cleared for home consumption as well as for exports

2. The facts of the case, in brief, are that the appellant had cleared their finished excisable goods on payment of central excise duty for home consumption. They had also exported excisable goods either without payment of duty under Rule 19 of the Central Excise Rules (CER), 2002 or under UT-1 on payment of central excise duty under a claim of Rebate under Rule 18 of the CER, 2002.

2.1 During the period April 2011 to March 2012, the appellant had exported goods on payment of excise duty @ 10% under Notification No. 02/2008-CE dated 01.03.2008. They had thereafter, filed 22 claims seeking rebate of total central excise duty amount of Rs. 4,05,51,935/-, paid @ 10% on the exported goods. The rebate sanctioning authority had vide 22 separate O-I-Os sanctioned the rebate of Rs. 1,98,23,547/- in cash and the remaining amount of Rs. 2,07,27,388/- was sanctioned by way of re-credit in their CENVAT credit account. The reasons for sanctioning the amount as re-credit was stated to be that excess central excise duty was paid @ 10% on the exported goods under Notification No. 02/2008-CE, though the same goods for home consumption were cleared by the appellant at effective rate of duty of 4% or 5% ad valorem, under Notification No. 04/2006-CE (as amended). Thus, the appellant have simultaneously availed the benefit of two separate notifications, for domestic and export clearance in respect of same goods.

2.2 Aggrieved by the 22 O-I-Os, the appellant had preferred appeal before the Commissioner (A), who vide O-I-A No. 146 to 168/2012(Ahd-II)CE/AK/Commr(A)/Ahd dated 28.06.2012, upheld the aforesaid O-I-Os. Being aggrieved by the said O-I-As, the appellant filed a revision application before the Revisionary Authority under Section 35EE of the CEA, 1944. The Revisionary Authority has decided the revision application, vide Order No. 1414-1436/2013-CX dated 26.12.2013, wherein the application of the appellant were rejected and the impugned O-I-As were upheld. Being aggrieved by the said order of the Revisionary Authority, the appellant filed a Writ Petition before Hon'ble High Court of Gujarat with **SCA No.6486 of 2014**, which is currently pending.

2.3 Meanwhile, during the pendency of the above Writ Petition, again an order was passed by the Revisionary Authority on 04.03.2020, on the same revision application already filed by the appellant. Order No. 315-337/2020-CX(WZ)/ASRA/Mumbai dated 04.03.2020 was passed by a different Revisionary Authority wherein the revision application filed by the appellant against O-I-A No. 146 to 168/2012(Ahd-II)CE/AK/Commr(A)/Ahd dated 28.06.2012 was allowed in light of the judgment passed by the Hon'ble High Court of Gujarat in the case of Arvind Ltd- 2014 (300) ELT 481(Guj),



which was affirmed by the Hon'ble Supreme Court in Union of India Vs Arvind Ltd reported at 2017(352) ELT A21(SC).

2.4 Pursuant to Order No. 315-337/2020-CX(WZ)/ASRA/Mumbai dated 04.03.2020, the appellants have filed a claim seeking refund of Rs. 2,07,27,388/- on 04.01.2022. Department, however, issued a Show Cause Notice (SCN) bearing F. No. V/27-66/Refund/Cadila/2021-22 dated 09.02.2022 to the appellants on following grounds;

- The refund claim filed on 04.01.2022, pursuant to Revisionary Authority Order dated 04.03.2020, is beyond the period of limitation of 1 year prescribed under Section 11B(1) read with Section 11B(5)(B)(ec) of the Central Excise Act, 1944;
- Since the rebate sanctioning authority had allowed re-credit of the amount of Rs. 2,07,28,388/-, the appellants might have re-credited the same in their CENVAT credit account during the respective period. The appellants, however, has not produced any documentary evidence to establish that the claimed amount has been reversed / debited from their CENVAT credit account.

2.5 The appellants, in reply to the said SCN, filed a written reply wherein they informed that the present refund has been filed in pursuance of Order No. 315-337/2020-CX(WZ)/ASRA/Mumbai dated 04.03.2020. However, as the decision of Hon'ble High Court of Gujarat in the SCA No.6486 of 2014 is still pending, they requested the refund sanctioning authority to keep the matter in abeyance as adjudication of SCN dated 09.02.2022 would be pre-mature and may lead to duplicity of proceedings on the same rebate claims filed on the same issue. The refund sanctioning authority rejected the request of the appellants and adjudicated the SCN vide the impugned order. The refund claim filed by the appellants was rejected on the grounds that:-

- the appellants have deliberately suppressed the facts that in respect of same rebate claims, the Revisionary Authority had earlier rejected their appeal and against such rejection, they have filed a Writ Petition before Hon'ble High Court of Gujarat.
- In reply to the SCN, they have not defended the allegation made in the SCN.
- Even if the matter is sub-judice before Hon'ble High Court of Gujarat, the appellants refrained from discussing the observations in the SCN. Therefore, there is no ambiguity that they have nothing to say in their defence against the allegations made in the SCN.
- The appellants have not produced the documentary evidence to establish the fact that the CENVAT credit allowed to them was not availed and utilized by them.
- The refund claim is time barred as was filed beyond the prescribed time limit of one year which ended on 03.03.2021, whereas the claim was filed on 04.01.2022.
- The Order No. 315-337/2020-CX(WZ)/ASRA/Mumbai dated 04.03.2020 passed by the Revisionary Authority cannot be said to have attained finality as the issue is pending before Hon'ble High Court of Gujarat.

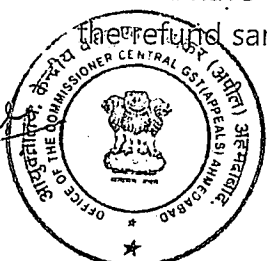
3. Being aggrieved with the impugned order passed by the refund sanctioning authority, the appellants have preferred the present appeal, wherein they have contested the rejection of refund claim of Rs. 2,07,27,388/-, mainly on following grounds:-



- The refund sanctioning authority in Para-5 of the impugned order observed that the appellant vide letter dated 12.05.2022, informed that they do not want further hearing and requested to decide the matter in view of their submission dated 12.05.2022. This observation is blatantly false and incorrect. The appellant nowhere requested to decide the matter based on their submission instead requested to keep the matter in abeyance.
- The refund sanctioning authority proceeded to decide the SCN and rejected the refund claim, even after acknowledging the fact that the issue is sub-judice before the Hon'ble High Court of Gujarat, which was in violation of judicial discipline. Reliance placed on the decision passed in the case of UOI Vs Kamlakshi Finance Corporation Ltd-1991 (55) ELT 431 (SC).
- The refund sanctioning authority failed to appreciate the fact that vide Order No. 315-337/2020-CX(WZ)/ASRA/Mumbai dated 04.03.2020, the Revisionary Authority has re-considered the same O-I-A dated 28.06.2012 and decided the issue in favour of the appellant in so far as the issue of availing benefit of two separate exemption notification simultaneously for domestic and export clearance of the same goods is concerned. Further, the argument that the appellant is trying to en-cash accumulated CENVAT credit is baseless as the appellant is entitled for CENVAT credit and the payment of duty through CENVAT account is equitable with the duty paid in cash. Thus, refund of duty paid through CENVAT credit account would also be admissible as rebate.
- The refund sanctioning authority held that the claim ought to have been filed on or before 03.03.2021 but the same was filed on 04.01.2022, hence hit by limitation. The claim was filed pursuant to Order No. 315-337/2020-CX(WZ)/ASRA/Mumbai dated 04.03.2020, therefore, the period of limitation shall be calculated 1 year from the date of said order. Further, Central Government vide Notification No. 13/2022-CT dated 05.07.2022 has excluded the period from 01.03.2020 to 28.02.2022 for computing the period of limitation for filing refund application, thus refund claim filed on 04.01.2022 is well within the time limit.
- The period of limitation is applicable for claiming refund of tax and not for claiming refund of an amount lying with the department as a deposit. Reliance is placed on the judgment passed in the case of Joshi Technologies International – 2016 (339) ELT 21.
- In terms of Section 142(3) of CGST Act, 2017, any amount accruing to the assessee pertaining to refund of any amount of CENVAT credit shall be paid in cash. Reliance is placed on the judgment passed in the case of Thermax Limited-2019 31 (GSTL) 60 Guj.
- They have not availed or utilized the re-credit of Rs. 2,07,28,388/- as the appellant had contested the rejection and disallowance of cash rebate of said amount. The refund sanctioning authority has failed to provide sufficient opportunity to the appellant to contest the allegations raised in the show cause notice, thus the impugned order is liable to be set-aside.

4. Personal hearing in the matter was held on 08.02.2023. Shri Ishan Bhatt, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in appeal memorandum. He also requested two weeks time for submitting necessary documents. However, till date no documents were submitted.

5. I have carefully gone through the facts of the case, the impugned order passed by the refund sanctioning authority, Orders dated 26.12.2012 and 04.03.2020 passed by the



Revisionary Authorities, SCA filed in the matter, submissions made in the appeal memorandum and the submissions made at the time of personal hearing. The issue before me for decision is whether the impugned order passed by the refund sanctioning authority, rejecting the claim seeking refund amounting to Rs. 2,07,28,388/-, in the facts and circumstances of the case, is legal and proper or otherwise?

6. On perusal of the facts of the case, it is observed that the appellant had challenged the O-I-A No. 146 to 168/2012(Ahd-II)CE/AK/Commr(A)/Ahd dated 28.06.2012, before the Revisionary Authority, which was decided twice by different Revisionary Authorities. The first Order No. 1414-1436/2013-CX dated 26.12.2013 was passed by Joint Secretary (Revision Authority), wherein the revision application filed by the appellant was rejected and impugned O-I-As were upheld. Subsequently, on the same appeal, another Order No. 315-337/2020-CX(WZ)/ASRA/Mumbai dated 04.03.2020 was passed by the Additional Secretary to G.O.I (Revision Authority); wherein the revision application filed by the appellant against same O-I-As was allowed. So, the single revision application filed by the appellant against O-I-A No. 146 to 168/2012(Ahd-II)CE/AK/Commr(A)/Ahd dated 28.06.2012 was decided twice by two different Revisionary Authorities, giving two contradictory decisions.

6.1 The appellant have against the Order dated 26.12.2013, passed by the first Revisionary Authority, filed a Writ Petition before Hon'ble High Court of Gujarat (SCA No.6486 of 2014), which is still pending. However, in pursuance of subsequent Order dated 04.03.2020, passed by the second Revisionary Authority in favour of the appellant, the appellant have filed a claim seeking refund of Rs. 2,07,28,388/-, in cash. The said refund claim was, however, rejected by the refund sanctioning authority on the grounds of being barred by limitation and for non-submission of documents to establish that the CENVAT credit allowed to them was not subsequently availed and utilized by them. The appellant have filed the present appeal contending that the rejection of refund claim by the refund sanctioning authority vide impugned order is pre-mature and in violation of judicial discipline, as the SCA No. 6486 of 2014, filed before Hon'ble High Court of Gujarat against Order No. 1414-1436/2013-CX dated 26.12.2013 is still pending.

6.2 I have gone through the O-I-A No. 146 to 168/2012(Ahd-II)CE/AK/Commr(A)/Ahd dated 28.06.2012, Order No. 1414-1436/2013-CX dated 26.12.2013 passed by the Joint Secretary (Revision Authority), Order No. 315-337/2020-CX(WZ)/ASRA/Mumbai dated 04.03.2020 passed by the Additional Secretary to G.O.I (Revision Authority) and the SCA No. 6486 of 2014. I find that the issue covered in Revisionary Authorities Orders dated 26.12.2013 and 04.03.2020 as well as the SCA No. 6486 of 2014, are similar.

6.3 It is further observed that the revision application filed by the appellant was decided twice by two different Revisionary Authorities, as both these orders passed by separate Revisionary Authorities were against the same O-I-A No.146 to 168/2012(Ahd-II)CE/AK/Commr(A)/Ahd dated 28.06.2012. The appellant had challenged the said O-I-As, as the Commissioner (A) had upheld the stand taken by the original rebate sanctioning authority, rejecting 22 rebate claims filed by the appellant on the grounds that the appellant cannot simultaneously avail the benefit of Notification No.4/2006-CE dated 01.03.2006 for home clearance by paying central excise duty at 4%/5% and the benefit of Notification No. 02/2008-CE dated 28.02.2008 for export clearance of same goods, by paying central excise duty @10%. This appeal was decided by the first Revisionary Authority vide Order dated 26.12.2013 against the appellant. The said order was



challenged by the appellant, by filing a SCA No. 6486 of 2014 before Hon'ble High Court of Gujarat, which is still pending.

6.4 However, the same appeal was again decided by the second Revisionary Authority in the year 2020, ex-parte, as the appellant did not attend the personal hearing. This time the decision was given in favour of the appellant. Therefore, they have filed a claim seeking refund in cash, in pursuance of the Revisionary Authority's second Order No.315-337/2020-CX(WZ)/ASRA/Mumbai dated 04.03.2020.

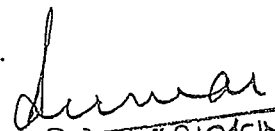
6.5 A correspondence was, therefore, made to A.C.(RRA), CGST, Ahmedabad North, vide letter No. GAPPL/COM/CEXP/8/2023-Appeals dated 06.03.2023 & 23.03.2023 seeking status of the Order No. 315-337/2020-CX(WZ)/ASRA/Mumbai dated 04.03.2020. The A.C (RRA), vide letter No. GEXCOM/REV/CE/OIO/1293/2022-Rev dated 29.03.2023, informed that the Order No. 315-337/2020-CX(WZ)/ASRA/Mumbai dated 04.03.2020 passed in favour of the appellant has been accepted by the department. Thus, it is apparent that the decision passed vide Order dated 04.03.2020 of the Revisionary Authority has attained finality.

6.6 Considering the fact that the SCA No. 6486 of 2014 (*filed by the appellant against the Order No.1414-1436/2013-CX dated 26.12.2013, passed by the first Revisionary Authority*) is still pending before Hon'ble High Court of Gujarat and the subsequent Order No. 315-337/2020-CX(WZ)/ASRA/Mumbai dated 04.03.2020, passed in favour of the appellant has not been appealed by the department, I find that it would be in the interest of justice to wait for the outcome of the aforesaid SCA, as the issue is still pending before a higher judicial forum. The same has also been requested by the appellant before the refund sanctioning authority. As the outcome of the said SCA shall have binding on the subsequent decision taken vide Order dated 04.03.2020, I, therefore, without going into the merit of the case, remand the matter to the adjudicating authority with the direction to keep the matter in abeyance, till a decision in the SCA No. 6486 of 2014 is made. Even otherwise, the refund claim was filed in pursuance of Order dated 04.03.2020 of the Revisionary Authority, which has been accepted by the department. Hence, the same is binding upon the refund sanctioning authority.

7. In view of the above discussion and findings, I allow the appeal filed by the appellant by way of remand.

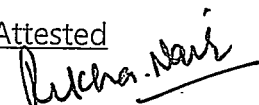
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

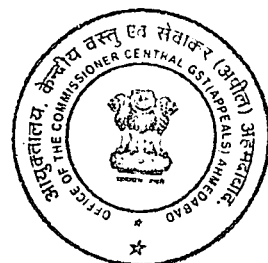
  
(अखिलेश कुमार)  
आयुक्त(अपील्स)  
2023..

Date: 31.03.2023

Attested

  
(Rekha A. Nair)  
Superintendent (Appeals)  
CGST, Ahmedabad

**By RPAD/SPEED POST**





To,  
M/s. Zydus Lifesciences Ltd.,  
(Formerly known as M/s. Cadila Healthcare Ltd.)  
Plot No, 417-419-420 (Part),  
N.H. 8A, Sarkhej Bavla Highway,  
Village- Moraiya, Sanand,  
Ahmedabad

**Appellant**

The Assistant Commissioner,  
Central Tax, CGST & Central Excise,  
Division-IV, Ahmedabad North  
Ahmedabad

**Respondent**

**Copy to:**

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.  
(For uploading the OIA)
4. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.
5. Guard File.

