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
07926305065- टेलेफैक्स07926305136

DIN: 20221264SW0000419694

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/36/2022-APPEAL/5499-505

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-79/2022-23**
दिनाँक Date : **13-12-2022** जारी करने की तारीख Date of Issue 16.12.2022

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **6-7/REFUND/2021/AC/KMV** दिनाँक: **28.10.2021**, issued by Assistant Commissioner,Division-IV, CGST, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s Cadila Healthcare Ltd.,
   Survey No. 417, Sarkhej-Bavla,
   N.H. 8A, Village Moraiya,
   Sanand, Ahmedabad

2. Respondent
   The Assistant Commissioner, CGST,Division-IV, Ahmedabad North , 2nd Floor, Gokuldham 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 अतत नीचे बताए गए मामलों के बारे में पूवोक्त 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 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.

(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 मामलें 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 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।

(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 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–बी/35–इ के अंतर्गतः–

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 2nd माला, 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. 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 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 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 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 in 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 अपीलो 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. Cadila Healthcare Ltd., Survey No. 417, Sarkhej-Bavla Road, N.H. 8A, Village- Moraiya, Sanand, Ahmedabad (hereinafter referred to as '*the appellant*') against Order–in–Original No. 6-7/REFUND/2021/AC/KMV dated 28.10.2021 (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").

2. 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. For the service tax discharged on air freight charges paid on exports, the appellant use to file claims seeking refund in terms of Notification No.41/2007-ST dated 06.10.2007, as amended vide Notification No.03/2008-ST dated 19.02.2008. According, on 09.01.2009, they filed a refund claim of Rs.1,06,63,539/- covering period (July,2008 to September,2008) and subsequently on 19.05.2009, a refund claim of Rs.1,12,26,564/- covering period (October,2008 to December,2008) was filed before the jurisdictional refund sanctioning authority.

2.1 On scrutiny of the documents submitted by the appellant, following observations were made by the refund sanctioning authority and accordingly SCN (Show Cause Notices) bearing No.V.30/18-1/Ref/IV/08 dated 04.07.2009 and SCN no.V.30/18-17/Ref/IV/09 dated 21.08.2009, were issued to the appellant, on following grounds:-

a) The appellant claimed refund under 'Courier Service' whereas the verification of invoice issued by M/s. Fedex Express Corporation revealed that they were charging freight of shipment for moving cargo out of India through international flight which was neither a 'Courier service' nor 'Transportation service', mentioned in Section 65 (105) (f) of the Finance Act, 1994.

b) Quantity of the goods exported in many invoices did not tally with the quantity as shown in ARE-1 and the Shipping bills. Invoices showed excess quantity compared to actual quantity exported, thus excess refund of Rs.8,32,379/- appeared to have been claimed for the period 01.07.2008 to 30.09.2008.

c) The refund of service tax paid for exports made in June, 2008 was claimed under the quarter (July, 2008 to September, 2008) and refund of service tax paid for exports made in January, 2009 was claimed under the quarter (October, 2008 to December, 2008,) which is not admissible. Further both the claims for respective quarters were filed beyond the stipulated period of 60 days prescribed in the notification.

d) Also the proof of service tax payment on the services for which claim seeking refund was filed, had not been produced alongwith the said claims which is a pre-requisite in terms of Notification No.41/2007-ST dated 06.10.2007 as amended. The copies of the documents like Shipping bills, ARE-1, Custom Invoices and Bills of FEDEX were also not self certified and copy of Air Way Bill were also not submitted alongwith the refund claim.

2.2 The aforementioned SCNs were decided vide O-I-O No.487/REFUND/09 dated 13.08.2009 and O-I-O No.657/REFUND/09 dated 30.10.2009, wherein the refund claims were rejected.

2.3 Being aggrieved, the appellant filed appeals before the Commissioner (Appeal-I), Central Excise, Ahmedabad who vide O-I-A No.445/2009(Ahd-II)CE/CMC/Commr(A)/Ahd dated 31.12.2009 and O-I-A No.76/2010(Ahd-II)CE/CMC/Commr(A)/Ahd dated 11.02.2010, rejected the appeal of the appellant and held that;

i. The freight charges paid by the appellant are classifiable under courier service. However, the invoices raised by the courier agency i.e. FEDEX does not specify the IEC code number of exporter, export invoice number, nature of courier, destination of the courier including the name and address of the recipient of the courier. The Airway Bill number mentioned in the invoice of FEDEX Express does not tally with the Airway Bill number mentioned in the corresponding Shipping Bill. The Master Airway Bill mentioned in the House Airway Bill is also not reflected in the invoice raised by FEDEX. As no other supporting documents were produced by the appellant, the refund of tax paid under Courier service is not eligible, in terms of non-compliance of conditions prescribed in the Notification No.41/2007-ST.

ii. The argument that the refund of courier service was earlier sanctioned by the refund sanctioning authority is illogical as each claim filed for particular quarter is to be treated separately in terms of the conditions prescribed in the Notification No.41/2007-ST.

iii. In terms of Para 2(e) of the notification, the claim is to be filed on quarterly basis and within 60 days from the end of the relevant quarter during which the said goods have been exported. As the claim of Rs.5,21,791/- in respect of the goods exported during April,2008 to June, 2008, was filed on 09.01.2009, the same is held as time barred.

iv. The appellant has not given any reasonable justification and no documentary evidence is produced to support weight variation in invoices of M/s. FEDEX and the ARE-1, therefore, their claim that there was no short shipment of export cargo is not sustainable.

v. The contention of the appellant that, the medicines namely 'Ribavirin and Azathioprine' exported were exempted from payment of excise duty in terms of Sr.No.41 of the Notification No.41/2007-ST is accepted. However, in case of such exports, they were required to produce the export invoices duly endorsed by the customs officials evidencing such exports, which were not furnished hence, it is difficult to establish that the goods were actually exported.

2.4 Aggrieved by the abovementioned O-I-As, the appellant preferred appeal before the Hon'ble CESTAT, Ahmedabad Bench. Hon'ble Tribunal vide Final Order No. A/10057-10058/2019 dated 03.01.2019, remanded the case back to the adjudicating authority for fresh decision after verification of the documents.

2.5 In the denovo proceedings, the refund sanctioning authority vide the impugned order held that;

a) The service tax paid on air freight for transportation of goods by air is covered under 'Courier Service'.

b) As regards weight variation of goods shown in the invoices versus the quantity shown in ARE-1 and Shipping Bills, the appellant has failed to produce any documentary evidence justifying the variation.

c) In terms of Para 2(e) of the notification, the claim is to be filed on quarterly basis within 60 days from the end of the relevant quarter during which the said goods have been exported. The claim of Rs.5,21,791/- filed on 09.01.2009 was in respect of the goods exported under Invoice No.964535113 dated 15.06.2008 and the claim of Rs.34,287/- filed was in respect of the goods exported under Invoice No.964596354 dated 01.01.2009, which does not pertain to the relevant quarter. Thus, total claim of Rs.5,56,078/- was held as time barred.

d) On the exports of 'Ribavirin and Azathioprine', the appellant were required to produce the export invoices duly endorsed by the customs officials evidencing such exports. However, the said documents were not furnished therefore the refund claim covering invoices listed at (sr. no. 1 to 9) for the quarter ending September, 2008 and claim covering invoices listed at (sr. no. 10 to 13) for the quarter ending December, 2008 were held inadmissible, as the conditions prescribed in the notification were not fulfilled.

e) In terms of column no-4 of Sr. no-10 of Notification No.02/2008-ST amending Notification No.41/2007-ST, the receipt issued by the courier agency should specify the IEC code number of exporter, export invoice number, nature of courier, destination of the courier including the name and address of the recipient of the courier and the exporter should produce evidence to link the use of courier service to export goods. The invoices raised by the courier agency i.e. FEDEX does not specify the IEC code number of exporter, export invoice number, nature of courier, destination of the courier including the name and address of the recipient of the courier. The Airway Bill number mentioned in the invoice of FEDEX Express does not tally with the Airway Bill number mentioned in the corresponding shipping bill. The Master Airway bill mentioned in the House Airway Bill is also not reflected in the invoice raised by FEDEX. As no supporting documents were produced by the appellant, the refund of tax paid under courier service is not eligible in terms of non-compliance of conditions prescribed in the said notifications.

Accordingly, the refund claim of Rs.1,06,63,539/- covering period (July,2008 to September,2008) and claim for Rs.1,12,26,564/- covering period (October,2008 to December,2008), filed by the appellant were rejected by the jurisdictional refund sanctioning authority.

3. Being aggrieved with the impugned order passed by the refund sanctioning authority, the appellant has preferred the present appeal, wherein they contested the rejection of refund claim of Rs.1,06,63,539/- & Rs.1,12,26,564/-, mainly on following grounds:-

- The adjudicating authority has not taken note of all the documents submitted as evidence of export and rejected the claim on the sole ground of non-compliance of the conditions of the notification.
- The service provider has charged the courier charges on the basis of dimensional weight in cases where it is higher than the actual weight. This fact has been

clarified by FEDEX vide letter dated 16.03.2009. The service tax has been paid on the entire bill amount. As far as the exports and payment of tax is not disputed, refund cannot be rejected.

- In some cases the goods ARE-1 were not submitted as the goods were exempted from levy of excise duty however, in all such cases export invoices, shipping bills and airway bills etc were produced on which custom officer has put his endorsement which prove that the goods have been exported. They also produced illustrative copies of these documents for ready reference.

4. Personal hearing in the matter was held on 12.12.2022. Shri Vaibhav Vahia, Senior Manager, and Shri Amit Parmar, Manager, appeared on behalf of the appellant. They reiterated the submissions made in appeal memorandums for consideration.

5. I have carefully gone through the facts of the case, the impugned orders passed by the refund sanctioning authority, 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 refund of Rs.1,06,63,539/- and Rs.1,12,26,564/- claimed by the appellant in respect of the service tax paid on air freight charges on exports, is eligible in terms of Notification No.41/2007-ST dated 06.10.2007, as amended vide Notification No.03/2008-ST dated 19.02.2008. The period of dispute involves period from July, 2008 to December, 2008

5.1. I find that the dispute that the service tax paid on air freight for transportation of goods by air in this case is covered under 'Courier Service' is settled. However, to examine the admissibility of the refund claim in terms of Notification No.41/2007-ST dated 06.10.2007, as amended vide Notification No.03/2008-ST dated 19.02.2008, the matter needs to be examined in light of the contentions put forth by the appellant.

6. The appellant have contended that the adjudicating authority has not taken note of all the documents submitted as evidence of export and rejected the claim on the sole ground of non-compliance of the conditions of the notification. They claim that various submissions made before the refund sanctioning authority as well as the oral submissions were overlooked hence the impugned order should be set-aside. I have gone through the impugned order and I find that the refund sanctioning authority has recorded the defense of the appellant and after analyzing and verifying the facts made by the appellant, he had recorded the findings. On the dispute of exports of 'Ribavirin and Azathioprine' the appellant were required to produce the export invoices duly endorsed by the customs officials evidencing such exports. However, the said documents were not furnished before the refund sanctioning authority, therefore, the refund claim covering invoices listed at (*sr. no. 1 to 9*) for the quarter ending September, 2008 and claim covering invoices listed at (*sr. no. 10 to 13*) for the quarter ending December, 2008, were held inadmissible, for non fulfilment of the conditions prescribed in the notification. Similarly, no documents were submitted to justify weight variation. The claim for duty exemption is not a matter of right and only if the claimant satisfies the requirements strictly, that he is entitled for the same. Therefore, it cannot be said that the denial of refund of duty by refund sanctioning authority was arbitrary because, unless the documentary evidence is provided, the condition prescribed in the notification for granting exemption cannot be considered to have been fulfilled.

7. Coming to the issue of variation in quantity of goods exported, the department has taken a stand that as the quantity shown in FEDEX Invoice is in excess to that of the quantity shown in respective ARE-1 and Shipping Bills, thus the claim of Rs.8,32,379/- filed, is excess. The appellant, on the contrary, have reiterated the submissions made before the refund sanctioning authority, stating that the service provider has charged the courier charges on the basis of dimension weight in cases where it is higher than the actual weight. They have claimed that it is evident from the letter issued by FEDEX on 16.03.2009. However, on going through the appeal memorandum, I find that the above mentioned letter was not produced before me. It is observed that in airfreight, standard carrier pricing is based on weight rather than volume. However, light loads take up much more space than their share of weight load, hence, would be unprofitable for airlines to ship. Therefore, all means of freight transportation are ruled by weight and cubic measurement factors, where the carrier will charge based on Actual Weight or Volumetric, whichever is deemed to be the greater. As the appellant has failed to produce the letter issued by FEDEX on 16.03.2009 or any other documentary evidence justifying their reasoning on weight variation, I find their argument cannot be accepted and is rejected accordingly.

8. Further, Notification No. 41/2007-S.T. provides for claim of refund by an exporter who had used certain specified services for the export of the goods, subject to the conditions specified therein. The provision (f) of the said notification states that the refund claim shall be accompanied by documents evidencing, (i) export of the said goods; (ii) payment of service tax on the specified services for which claim for refund of service tax paid is filed; (iii) wherever applicable, a copy of the written agreement entered into by the exporter with the buyer of the said goods, as the case may be. Similarly, provision (g) also states that the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself that the said services have been actually used for export of said goods, refund the service tax paid on the specified services used for export of said goods. The Courier Invoice and Shipping Bills /ARE-1s are the document which needs to be co-related to establish the fact that the tax payment was towards the exports of goods mentioned in ARE-1. Any deviation observed automatically shifts the onus on the appellant to justify such variation so as to satisfy the refund sanctioning authority. In absence of any such co-relating or supporting documents, it would be difficult to extend the benefit of the notification. I, therefore, agree with the findings of the adjudicating authority that the refund amount of Rs.8,32,379/- (01.07.2008 to 30.09.2008) on this issue is not admissible to the appellant.

9. Another ground for rejection was that in terms of Para 2(e) of the notification, the claim is to be filed on quarterly basis within 60 days from the end of the relevant quarter during which the said goods have been exported. However, the claim of Rs.5,21,791/- filed on 09.01.2009 was in respect of the goods exported under Invoice No.964535113 dated 15.06.2008 and the claim of Rs.34,287/- was in respect of the goods exported under Invoice No.964596354 dated 01.01.2009, which does not pertain to the relevant quarters, hence total claim of Rs.5,56,078/- was held as time barred. I find that the appellant has not raised any argument countering the finding of the refund sanctioning authority. Hence, I find no reason to interfere with the findings of the refund sanctioning authority.

10. Similarly, on the exports of 'Ribavirin and Azathioprine', the appellant failed to produce the export invoices duly endorsed by the customs officials evidencing their exports. Hence, the claim pertaining to the invoices listed at **Sr. No. 1 to 9** for the quarter ending September, 2008 and **Sr. No. 10 to 13** for the quarter ending December, 2008 have been held to be inadmissible. The appellant, however, has contended that the ARE-1s were not submitted as these goods were exempted from levy of excise duty. But in all such cases, export invoices, shipping bills and airway bills etc were produced on which custom official has put his endorsement which is sufficient to prove that the goods have been exported. They also produced illustrative copies of these documents for ready reference.

10.1 I have gone through the sample invoices produced before me. The appellant has produced export invoices mentioning the description of goods as 'ALLOPURINOL ZYDUS TAB 300 MG', 'METFORMIN ZYDUS 1000MG TABS', 'IBUPROFENE ZYDUS TABS 400MG' and their corresponding Shipping Bills and ARE-1. However, on going through the documents, I find that the dispute was regarding non-submission of export invoices in respect of 'Ribavirin and Azathioprine', whereas the documents submitted before me, are of the goods of different description 'ALLOPURINOL ZYDUS TAB 300 MG', 'METFORMIN ZYDUS 1000MG TABS', 'IBUPROFENE ZYDUS TABS 400MG'. As the documents submitted are not related to the disputed goods, the furnished documents cannot be accepted, hence, the claim is not admissible.

11. Another ground for rejection by the refund sanctioning authority was non-fulfilment of the conditions prescribed in the notification. It is a well settled position of the law that a person, who claims the exemption, has to prove that he satisfies all the conditions of the Notification so as to be eligible to the benefit of the same. References are made to the Hon'ble Supreme Court Constitutional Bench decision in the case of *CCE* v. *Harichand Shri Gopal* 2010 (260) E.L.T. 3 (S.C.); *Mysore Metal Industries* v. *CC*, Bombay 1988 (36) E.L.T. 369 (S.C.); *Moti Ram Tolaram* v. *Union of India* - [1999 (112) E.L.T. 749 S.C.]; *Collector* v. *Presto Industries* - 2001 (128) E.L.T. 321 and *Hotel Leela Ventures* v. *Commissioner* - 2009 (234) E.L.T. 389 (S.C.). It stands settled in all the above decisions that onus to prove and show the satisfaction of the conditions of the Notification is on the person, who claims the benefit of the same, and every exemption Notification has to be read in strict sense. In the case of *CCE* v. *Paranteral Drugs* - 2009 (236) E.L.T. 625 (S.C.), the position was reiterated by the Hon'ble Apex Court that exemption Notification have to be read strictly and burden is on the assessee to show that they fall within the four corners of the exemption Notification. Reference can again be made to the decision of the Hon'ble Supreme Court in the case of *Commissioner of Customs (Import), Mumbai* v. *Dilip Kumar & Company*— 2018 (361) E.L.T. 577 (S.C.) wherein it was held that burden to prove entitlement of tax exemption in terms of the Notification is on the person claiming such exemption. I also refer to another decision of the Hon'ble Supreme Court in the case of *Larsen & Toubro Ltd.* v. *Commissioner of Central Excise, Hyderabad* - 2015 (324) E.L.T. 646 (S.C.). As such, I agree with the refund sanctioning authority that the appellant is not entitled to the benefit of the Notification as the conditions prescribed therein have to be scrupulously followed, being mandatory in nature. The exemption notification, being a liberal piece of legislation, needs to be interpreted strictly within the plain words and language provided therein and there is no scope of intendments. The conditions of the notification and fulfillment thereof are to

be followed/fulfilled in its true letters and spirits and these are not mere formalities and once the conditions of notification granting exemption/refund are not satisfied, the refund cannot be granted to the appellant.

12. In view of the above discussions and findings, I find that the appellant, by failing to produce the documents co-relating the use of courier service in the export of goods, has failed to fulfill the conditions of the notification prescribed therein. I therefore, reject the appeal filed by the appellant and uphold the impugned order as the same is sustainable on merits.

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

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

13th December, 2022..
(अखिलेश कुमार)
आयुक्त(अपील्स)

Date: 12.2022

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

By RPAD/SPEED POST

To,
M/s. Cadila Healthcare Ltd., - **Appellant**
Survey No. 417, Sarkhej-Bavla Road,
N.H. 8A, Village- Moraiya,
Sanand, Ahmedabad

The Assistant Commissioner - **Respondent**
CGST, Division-IV,
Ahmedabad North,
Ahmedabad

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.