



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  
 07926305065- टेलिफैक्स 07926305136



DIN: 20221264SW000000CB5F

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(18)2 to 4/EA2/AHD-II/14-15 / 6112 - 6117
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-82 to 84/2022-23  
 दिनांक Date : 15-12-2022 जारी करने की तारीख Date of Issue 20.12.2022  
 आयुक्त (अपील) द्वारा पारित  
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 969 to 970/AC/09-Refund dated 22.12.2009, 971 to 972/AC/09-Refund dated 22.12.2009 and 992/AC/09-Refund dated 24.12.2010  
 दिनांक: 23.06.2021, issued by Assistant Commissioner, CGST, Division-I, Central Excise, Ahmedabad-II.
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Dishman Pharmaceuticals & Chemicals Ltd.,  
 Plot No. 1216/11, 1216/12 & 1216/19 to 27, Phase-IV,  
 GIDC, Naroda, Ahmedabad-382330

2. Respondent

The Assistant Commissioner, Division-I, CGST, Ahmedabad North,  
 Ground Floor, Jivabhai Mansion, Ashram Road, Ahmedabad-380009

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, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

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 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) 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 2<sup>nd</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 पंढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall 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 हैं।

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.

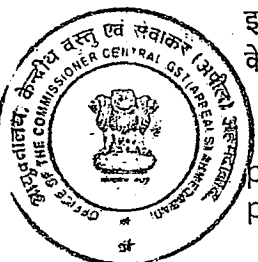
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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**

M/s. Dishman Pharmaceuticals & Chemicals Ltd., Plot No. 1216/11, 1216/12 & 1216/19 to 27, Phase-IV, GIDC, Naroda Ahmedabad-382330 (for brevity referred to as "the assessee") were holding Central Excise Registration No.AAACF4164DXM007 as well as Service Tax Registration No.AAACD4164DST002. They were engaged in the manufacturing of Bulk Drugs and Fine Chemicals falling under Chapter 29 of the CETA, 1985 and exported the same under LUT/Bond/Rebate. They had filed three claims seeking refund (under Notification No.41/2007 dated 06.10.2007 as amended) of the service tax paid in respect of services used in the export of goods. These claims were decided vide following Order-in-Originals listed below, passed by the Assistant Commissioner of erstwhile Division-I, Central Excise, Ahmedabad-II (for short referred to as the "refund sanctioning authority"). The details of the claims are listed below.

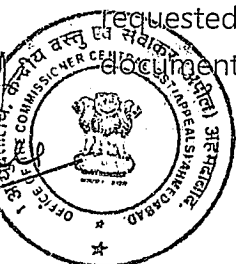
Sr.No.	OIO No & Date	Amount (in Rs)	Services
01	969 to 970/AC/09-Refund dated 22.12.2009	1,44,638/-	C&F Charges, CHA, Freight Outward, Sales Commission
02	971 to 972/AC/09-Refund dated 22.12.2009	90,245/-	C&F Charges, CHA, Freight Outward
03	992/AC/09-Refund dated 24.12.2010	2,13,677/-	C&F Charges, CHA, Freight Outward, Sales Commission

2. The refund sanctioning authority vide aforesaid O-I-Os, sanctioned the refund claimed by the assessee, in terms of the provisions under Notification No.41/2007 dated 06.10.2007 read with Section 11B of the CEA, 1944.

2.1 Being aggrieved with the said O-I-Os, the department preferred appeals which were decided by the then Commissioner (Appeals-I), Ahmedabad vide OIA No. AHM-EXCUS-002-APP-032 to 034-14-15 dated 20.05.2014 (for brevity referred to as "the impugned order"). The Commissioner (Appeals-I) upheld the refund of service tax paid towards THC, REPO, BL & CONCOR charges and Custom House Agent service. However, the refund of service tax paid on C&F charges and Sales Commission (Foreign) was held inadmissible. Thus, department's appeal was partially allowed and partially rejected.

2.2 Aggrieved with the decision of Commissioner (A), the assessee preferred appeal before the Hon'ble CESTAT, Ahmedabad Bench challenging the rejection of refund under C&F charges and Sales Commission (Foreign). They also pointed out that no personal hearing was granted to them by the Commissioner (A) and, therefore, requested to remand the matter back to the Commissioner (A). The Hon'ble Tribunal vide Final Order No. A/10743-10745/2015 dated 05.06.2015, remanded the matter to the first appellate authority for getting the documents verified and to issue appropriate order after following the principles of natural justice.

3. Accordingly, in the remand proceedings, personal hearing in the matter was held on 14.12.2022. Shri R. Subramanya, Advocate, appeared on behalf of the appellant in all the three cases. He stated that he has submitted relevant documents and invoices before Divisional Assistant Commissioner, who is also deciding the protective demand. He has requested to remand the case back to refund sanctioning authority for examination of documents.



4. I have carefully gone through the facts of the case, relevant O-I-Os, O-I-A dated 20.05.2014, Tribunal's Final Order No. A/10743-10745/2015 dated 05.06.2015 as well as submissions made at the time of personal hearing. The issue before me is to examine the admissibility of the refund of service tax paid on C&F Charges and Sales Commission (Foreign), which was earlier held inadmissible by the then Commissioner(A).

5. I find that the present appeal has come for adjudication before me in consequence of the remand order passed by Hon'ble Tribunal. The Commissioner(A) vide OIA dated 20.05.2014 had upheld department's appeal and denied the refund on the grounds that the appellant has not filed any service tax invoices for the services falling under the categories of C&F Charges and Sales Commission(Foreign). The Hon'ble Tribunal, therefore, while deciding the assessee 's appeal remanded the matter to the first appellate authority for getting the documents verified and to issue an appropriate order. To examine the admissibility of service tax refund claimed under Notification No.41/2007 dated 06.10.2007, the assessee was called to represent their case. The assessee has in the personal hearing, informed that they have submitted the relevant documents before the refund sanctioning authority who would, also be examining the protective demand issued in the matter. They, therefore, requested to remand the matter. Considering their request, I find it would be appropriate to remand the case back to the refund sanctioning authority, in the interest of justice.

6. The assessee is, therefore, directed to submit all the relevant documents and details to the refund sanctioning authority. The refund sanctioning authority after examining the documents shall decide the case afresh on the issues discussed at Para 5 above and, accordingly, pass a reasoned order, following the principles of natural justice.

7. Accordingly, in view of above discussion, I remand the issue pertaining to the admissibility of the refund of service tax paid on C&F charges and Sales Commission (Foreign), back to the refund sanctioning authority for deciding the matter in terms of directions of Hon'ble Tribunal supra.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The denovo matter stands disposed off in above terms.

*Aruna*  
15 Dec 2022  
(अखिलेश कुमार) 202  
आयुक्त (अपील्स)

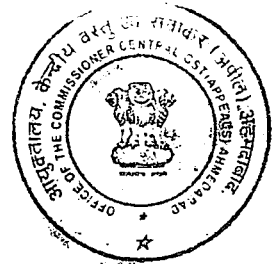
Date: 12.2022

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

**By RPAD/SPEED POST**

To,

M/s. Dishman Pharmaceuticals & Chemicals Ltd.,  
Plot No. 1216/11, 1216/12 & 1216/19 to 27,



Phase-IV, GIDC, Naroda  
Ahmedabad-382330

Assistant Commissioner,  
Central Tax, CGST & Central Excise,  
Division-I, 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.

