



सत्यमेव जयते

::आयुक्त (अपील-II) का कार्यालय,केंद्रीय उत्पाद

शुल्क::

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,
7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटेकनिक के पास,
आम्बवाडी, अहमदाबाद : 380015



7th Floor, Central Excise
Building,
Near Polytechnic,
Ambayadi,
Ahmedabad:380015.

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(30)77 /Ahd-II/Appeals-II/ 2016-17

1550 to 1554

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 108-16-17

दिनांक (Date): 30.03.2017, जारी करने की तारीख (Date of issue): 10/04/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker, Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No. 1382/Ref/2008 Dated: 09/01/08

issued by: Assistant Commissioner Central Excise (Div-IV), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Nirma Limited (Aculife healthcare)

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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 Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार 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

(□) 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।

G. J. K.

Cont.



- (c) 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।

- (d) 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) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) 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 ओ-20, न्यू मैटल हॉस्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 चार्ज 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.

- (6) 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।

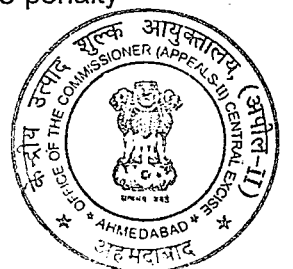
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 सन्दर्भ में 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

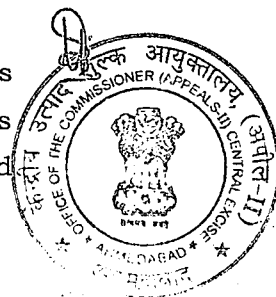
The subject case appeal filed by M/s. Nirma Limited, (formerly M/s. Core Health Care Ltd.), Village Sachana, Viramgam, Ahmedabad (hereinafter referred to as 'the appellant') against the MO No.1382/Reb/2008 dated 01.09.2008 by the asstt. Commissioner and then after OI No.97/2009(AhdII CE/ID/Commr(A)/Ahd dated 17.03.09 passed by The Commissioner((Appeals-II), Central Excise, Ahmedabad. The appellant are engaged in the manufacture of I.V. Fluids like Sodium Chloride Inj., Flusadex; etc.falling under Chapter 30 & 90 of CETA, 1985.

2. The brief facts of the case are, during the period under dispute, the Appellant had entered into agreement with M/s. Claris Life Science Ltd. for contract manufacturing of finished goods Sterile Water for injection 5 ml. under loan license arrangement. The Appellant was liable to pay Central Excise duty on transaction value under section 4 of CEA, 1944, Instead duty was paid wrongly under section 4A (MRP basis) of CEA, 1944. Therefore, for the period 2005-06, Appellant filed 6 refund claims under section 11B of the CEA 1944, amounting to Rs.26,20,075/- with the jurisdictional authority for the refund of the excess duty paid by them. Six SCN's were issued and all the refund claims were rejected by the original authority under OIO's No.1525 to 1530/R/2007 dated 28.12.2007. Being aggrieved by the said impugned orders, an Appeal was filed before the Commissioner (Appeals-II), Ahmedabad-II. Hon'ble Commissioner (Appeals) remanded the case back to the original authority. In the de-novo proceedings, Original authority rejected all the six claims, under MO No.1382/Reb/2008 dated 01.09.2008, Being aggrieved, the Appellant filed Appeal before the Commissioner (Appeals). The Commissioner (Appeals) vide OIA No.97/2009(AhdII) CE /ID/Commr(A)/ Ahd dated 17.03.09 held that the refund is admissible, but the refund amount was ordered to be credited to the Consumer Welfare Fund on the grounds that Appellant is unable to submit the basic documents to prove that incidence of duty has not been passed on to the customers.

3. Being aggrieved and dissatisfied with the impugned order in Appeal to the extent of the credit of the refund amount in the Consumer Welfare Fund, Appellant had filed Appeal before the Hon'ble Bench of CESTAT at Ahmedabad. The appellant has vide letter dated 19-10-16 submitted copy of the decision of the **Hon'ble Tribunal allowed the appeal by way of remand under Order No. A/10667/2016 dated 16.09.2016.** The Hon'ble Bench has recorded the findings in para 6 of the order as under:

"That though the documents/evidences placed before the authorities below, had not examined.....In the result, the impugned order is set aside and appeal is remanded to the Ld. Commissioner (Appeal) to consider all the documents/evidences on record and that would be produced by the appellant during the remand proceedings and record a finding on the same. Needless to mention, a reasonable opportunity of hearing be granted to the appellant."

It is also submitted that during the De-novo proceedings, appellant has produced the copy of agreement and copies of the Central Excise Invoices as well as commercial invoices, the certificate dated 10.06.2006 from the Cost accountant and



chartered account Certificates all dated 20.06.2006 pertaining to different refund claim were also produced.

that then company M/s. Core Healthcare entered into an agreement dated 01.04.03 with M/s Claris Life Science Ltd, to manufacture Sterile Water for Injection (SWFI), known as IV fluid falling under chapter 30, this type of manufacturing arrangement is properly known as loan license or contract manufacture in the pharmaceutical industry. Copy of the agreement is attached. it was agreed that M/s. Claris will pay Rs.0.40 per unit price, this was worked out as cost + Core health care margin i.e. Rs. 0.36 and margin of Rs.0.04, therefore, total Transfer price works out to be Rs.0.40 per unit and the central Excise duty prevailing at that time @ 16% which comes to Rs.0.06 per unit was also agreed to be paid on this value. Therefore, the total value +Excise duty which was recovered from M/s. Claris is Rs.0.46 per unit. However due to inadvertent mistake duty was paid on MRP of Rs.3.00, by adopting section 4A of CEA, 1944, the value after abatement of 40% comes to Rs.1.80 ($3.00 - 1.20 = 1.80$ and excise duty comes to Rs.0.29, therefore, the duty of Rs.0.29 per unit was paid at the time of clearance and shown in the Central Excise invoices. However, the duty was required to be paid @ Rs.0.06 per unit on transaction value agreed between both the parties. Upon noticing the mistake the duty payable under section 4 of the Act was worked out and, six refund claims pertaining to different periods were filed pertaining to the excess Excise duty paid inadvertently.

That the appellant has recovered the duty amount only at the rate of Rs.0.06 per unit from the M/s. Claris and the balance excess duty @ Rs.0.23 (Rs.0.29 less Rs.0.06) per unit has been borne by the appellant. This is further evident from the fact that the total sale amount of Invoice No.25/80015 dated 20.04.05 is for Rs.336105/- and your Honour will find by referring to the entries of these invoices made in the sales ledger maintained by the Appellant, that against the said amount the party account is debited by Rs.336105/-. This very fact proves beyond doubt that only Rs.0.06 per unit paid as excise duty is only recovered from the M/s. Claris and not the entire amount of Excise duty of Rs.0.29 per unit paid wrongly.. The copies of Central Excise Invoices and Commercial invoices along with sales ledgers are attached.

The Appellant has also produced the certificate from the independent cost Account and chartered Account to the effect that the Excise duty paid over and above Rs.0.06 per unit has not been recovered from M/s Claris, Both the Cost Accountant Certificate and Chartered Accountant Certificate is enclosed .

In case of refund the Board has also issued circular and guidelines to clarify that in case of refund claim, the Chartered Accountant certificate is to be relied as important documentary evidence while processing the refund claims. In support, they relied on following decisions.1. 2015 (319) ELT A118 (S.C.) — Dhariwal Industries Ltd. 2. 2014 (303) ELT 496 (Guj) — Dhariwal Industries Ltd.2014 (304) ELT 572 (Tn. Mum.) — Crystal Granite & Marble (Pvt]. Ltd. 3. 2014 (302) ELT 501 (Del) — Hero Motocorp. Ltd. 4. 2013 (32) STR 630 (Tn. Ahmd.) — Eastern Shipping Agency 5. 2011 (263) ELT 633 (Tn. Mum.) — Prince Rubber Inds. 6. 2008 (230) ELT 459 (Tn. Mum.) — Mhatre Engg. Pvt. Ltd.

The ratio of the above decisions is squarely applicable in the present case.



4. Personal hearing in the matter was accorded on 20.12.2016. Shri M.A. Patel, Consultant appeared on behalf of the appellant. He reiterated the memorandum of appeal, and submitted written submission and citations of unjust enrichment on dated 20-12-16. I have carefully gone through the caserecord, facts of the case and submissions made in the appeal memorandum and the written submission made during the personal hearing. it is admitted fact that in operative para 6 of the order-in-Appeal dated 17.03.09, the commissioner (Appeals) has held that refund is allowed but the refund amount is to be credited to the Consumer Welfare Fund, as the appellant is unable to submit the basic documents to prove that incidence of duty has not been passed on to the customers.

5. I find that, the then company M/s. Core Healthcare entered into an agreement dated 01.04.03 with M/s Claris Life Science Ltd, to manufacture Sterile Water for Injection (SWFI), known as IV fluid falling under chapter 30, this type of manufacturing arrangement is properly known as loan license or contract manufacture in the pharmaceutical industry. Copy of the agreement dated 01.04.2003 is attached .On perusal of the agreement, I find that, it was agreed that M/s. Claris will pay Rs.0.40 per unit price, this was worked out as cost + Core health care margin i.e. Rs. 0.36 and margin of Rs.0.04, therefore, total Transfer price works out to be Rs.0.40 per unit and the central Excise duty prevailing at that time @ 16% which comes to Rs.0.06 per unit was also agreed to be paid on this value. Therefore, the total value +Excise duty which was recovered from M/s. Claris is Rs.0.46 per unit. However due to inadvertent mistake duty was paid on MRP of Rs.3.00, by adopting section 4A of CEA, 1944, the value after abatement of 40% comes to Rs.1.80 ($300-1.20= 1.80$ and excise duty comes to Rs.0.29, therefore, the duty of Rs.0.29 per unit was paid at the time of clearance and shown in the Central Excise invoices. However, the duty was required to be paid @ Rs.0.06 per unit on transaction value agreed between both the parties. Upon noticing the mistake the duty payable under section 4 of the Act was worked out and, six refund claims pertaining to different periods were filed pertaining to the excess Excise duty paid inadvertently.

6. I find that, the Appellant for the purposes of clearance of finished goods from the factory use to prepare Central Excise Invoices. The sale proceeds is realized through commercial invoices, the Central Excise invoices is only raised for the purpose of Clearance of finished goods and payment of duty as per the provisions of rule 11 of Central excise. The Commercial invoice is raised for payment purpose. The booking of sale in the party ledgers and sales ledger is done based on Commercial invoices, The Commercial invoice is the documents which evidences the payment received from the buyer. In the Central Excise Invoices issued, the Appellant has shown MRP per unit as Rs.3.00 and the duty of Excise payable is calculated on Rs.1.80 i.e. the value after abatement of 40% and accordingly, wrongly paid central excise duty @ 16%. This is evident from the Central Excise Invoice No.50179 dtd.20.04.05, 50186 dtd.20.04.05 & 50187 dtd.20.04.15. Accordingly duty paid per unit is Rs.0.29 (basic duty @16% + Edu. cess 2%). Whereas as per the agreement the contract price per unit



is Rs.0.40 (Including margin) and Excise duty is payable on this amount @16% which comes to Rs.0.06 per unit and total sale value of 1 unit comes to Rs.0.46 per unit. However Appellant has recovered only Rs.0.46 per unit (inclusive of Excise duty) from M/s. Claris, this is evident from the Central Excise invoices and Commercial invoices submitted along with the Refund claim. One such commercial invoice No.25/80015 dated 20.04.05 may be referred, whereas the Sterile water F injection 5 ML has been sold at a unit price of Rs.0.46 (Inclusive of excise duty) From this your Honour will appreciate that the appellant has recovered the duty amount only at the rate of Rs.0.06 per unit from the M/s. Claris and the balance excess duty @ Rs.0.23 (Rs.0.29 less Rs.0.06) per unit has been borne by the appellant. This is further evident from the fact that the total sale amount of Invoice No.25/80015 dated 20.04.05 is for Rs.336105/- and your Honour will find by referring to the entires of these invoices made in the sales ledger maintained by the Appellant, that against the said amount the party account is debited by Rs.336105/-. This very fact proves beyond doubt that only Rs.0.06 per unit paid as excise duty is only recovered from the M/s. Claris and not the entire amount of Excise duty of Rs.0.29 per unit paid wrongly is recovered from M/s Claris, as also evident from the agreement dated 01.04.03, M/s Claris is only to pay Rs.0.06 Excise duty per unit of SWFI purchased from Appellant and Accordingly they have paid that much only and not the entire amount of Rs.0.29 per unit paid wrongly by the Appellant. This very fact proves that the incidence of duty has been borne by the Appellant and not pass on to M/s. Claris and so the bar of unjust enrichment could not be invoked in all the refund claims filed by the Appellant and therefore, Appellant is eligible to the claim. The copies of Central Excise Invoices and Commercial invoices along with sales ledgers are checked.

7. The Appellant has also produced the certificates from the independent cost Account and chartered Account to the effect that the Excise duty paid over and above Rs.0.06 per unit has not been recovered from M/s Claris, I find that, Chartered Accountants Shah & Shah Associates, in their each certificates all dated 20.06.06 in respect of all refund claims, has certified that they have checked the books of accounts and other relevant records of M/s Core Healthcare Limited, and certified that M/s CHL has sold SWFI- 5 ml to M/s Claris at the agreed price of Rs.0.46 per unit (inclusive of Excise duty of Rs.0.06 per unit) in respect of excise invoices as stated in refund claims, However M/s CHL has paid Excise duty on Retail sales price of Rs.3.00 per unit as per notification No.2/2005-CE (N.T.) dtd.7.01.05, they have also certified that on verification of record, M/s CHL has not passed on the burden of Central Excise duty to M/s Claris. Both the Certificates are checked.

8. I find that, it is a settled principle of law by various decisions of the courts and higher appellate authorities that the certificate issued by the Chartered Accountant or Cost Accountant is to be relied as a positive piece of evidence in cases pertaining to refund and rebate of Central Excise duty. It is more so when no such contrary documentary evidence is brought on record by the department, which suggests otherwise or questions the authenticity of the certification. In case of refund the Board has also issued circular and guidelines to clarify that in case of refund claim, the Chartered Accountant certificate is to be relied as important documentary evidence

9



while processing the refund claims. I relied upon following decisions.1. 2015 (319) ELT A118 (S.C.) Dhariwal Industries Ltd. 2. 2014 (303) ELT 496 (Guj) — Dhariwal Industries Ltd.2014 (304) ELT 572 (Tn. Mum.) — Crystal Granite & Marble (Pvt). LTd. 3. 2014 (302) ELT 501 (Del) —Hero Motocorp. Ltd. 6. 2013 (32) STR 630 (Tn. Ahmd.) — Eastern Shipping Agency 7. 2011 (263) ELT 633 (Tn. Mum.) — Prince Rubber Inds. 8. 2008 (230) ELT 459 (Tn. Mum.) — Mhatre Engg. Pvt. Ltd. The ratio of the above decisions is squarely applicable in the present case.

9. Further I find that, Regarding their plea of having borne the burden of excess duty paid @ Rs.0.23/- per unit and therefore provisions of unjust enrichment is not applicable, I find that the appellant has submitted relevant copies of excise invoice and commercial invoices and also submitted basic documentary evidences like Ledger Accounts of Claris maintained by the appellant, Bank Accounts to co-relate the bill wise payments received, of the relevant period and the duty payment particulars. I have considered all the documents/evidences produced by the appellant. Therefore, I hold that the appellant have proved that principle of unjust enrichment is not applicable to their case.

10. In view of the foregoing discussion and findings, I hold that said refund claims are admissible to the appellant.

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

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

U. Shankar

(उमा शंकर)

आयुक्त (अपील्स - II)

Attested

K.K. Parmar

[K.K.Parmar)
Superintendent (Appeals-II)
Central excise, Ahmedabad.

By Regd. Post A. D

M/s. Nirma Limited, (formerly M/s. Core Health Care Ltd.),
Village -Sachana,
Tal-Viramgam,
Dist-Ahmedabad-382150

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II.
3. The Dy. Commissioner, Central Excise, Div-III, Ahmedabad-II
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard file.
6. PA file.

Rand
Shankar
13-04-17

