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

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,

सत्यमेव जयते

7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन, पोलिटेकनिक के पास, आम्बवाडी, अहमदाबाद : 380015

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

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.) : **V2(29) 24/Ahd-II/Appeals-II/ 2015-16** /748 to 758

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 0021 -16-17**

दिनांक (Date): **19.07.2016,** जारी करने की तारीख (Date of issue): 20/7/16

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

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

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-), अहमदाबाद- II, आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No. **13/AC/DEMAND/14-15** **Dated: 05/02/2015** issued by:Asst.Commissioner.,Central Excise (Div-I), Ahmedabad-II

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

M/s Dishman Pharmaceuticals & Chemicals Ltd

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:

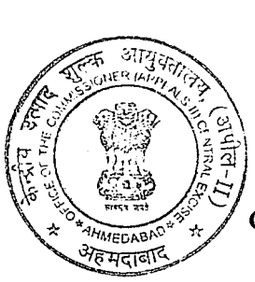
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए |

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

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है |



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(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 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।

(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 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) 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 मैन्टल हास्पिटल 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 इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर 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।

रेखाकिंत 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. 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 not withstanding 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.

(6) 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 .**

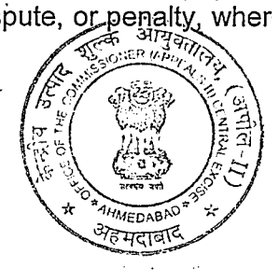
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

Subject appeal is filed by M/s.Dishman Pharmaceuticals and Chemicals Ltd, Survey No.1216/20,GIDC,PhaseIV,Naroda,Ahmedabd (hereinafter referred to as "the appellant] against Order in Original no.02-03/AKA/SUPDT/AR-I/DN-I/AHD-II/15-16 [hereinafter referred to as *'the impugned order*) passed by The Superintendent, Central Excise,div-I, Ahmedabad-II (hereinafter referred to as *'the adjudicating authority*').they are engaged in the manufacture of Bulk drugs and Fine chemicals falling under Chapter 29 & 38 of the first schedule of the Central Excise Tariff Act,1985[*hereinafter referred to as CETA, 1985'*] The appellant is registered with the service tax department and availing cenvat credit on various input services, under Cenvat Credit Rules, 2004. 2. Brief facts of the case is that, during the course of audit conducted by the Central Excise (Audit), for the period from April-2013 to Feb-2013,it was observed that the appellant had wrongly availed the credit of service tax towards out ward courier services, Membership fees, cab operator service and air travel agency ,though it was not covered under the definition of input service as per Rule 2(1) of Cenvat Credit Rules 2004. Show Cause Notice was issued for recovery of Rs. 21,706/- for recovery of credit along with interest and penalties. Vide above order the adjudicating authority confirmed the demand along with interest and imposed penalty of Rs. 21,706/- on the appellant.

3. Aggrieved by the impugned order, the appellants have filed this appeal on the following main grounds.

a. that the words 'in relation to' in the said definition is very crucial . that any service which has a direct or indirect connection with a specified service has to be treated as 'in relation to' that specified service. They have relied on judgment of Hon'ble Apex Court in the case of Doypack systems (P) Ltd, Vs Union of India cited 1988 (36) ELT 201 (SC)

b. that they have correctly taken the credit of cenvat credit of service tax paid on the courier services which were used for receiving the documents/samples of their products, which are very much connected to their activity of business and also that the cost of the courier services have been accounted for in their books of accounts as an expenditure. The said services are squarely covered in the definition

of the input service as an 'activity related to business' as well as 'sales promotion'. They have relied on decision of 1.Rohit Surfactants P. Ltd vs CCEBhopal cited in 2009 (15) STR 169 (Tr-Delhi) 2.Cadila Healthcare Ltd vs CCE, Ahmedabad-I cited in 2009 (16) STR 325 (Tri-Ahd) 3.CCE & Customs, Guntur vs CCL Products India Ltd cited in 2009 (16) STR 305 (Tr-Bang).

4. Further, the appellant have Prayed for condonation of delay on the following grounds:

a. There is a delay in filing of the said appeal. The appellants wish to pray before the Ld Commissioner for condonation of delay. The appellant submits that since the receipt of the impugned OIO ,date of receipt is 20-3-2015. There is a delay in filing of appeal by **28** days and hence, this petition praying for condonation of delay on the following grounds:

b. The appellant submits they could not file the appeals in the prescribed period of 60 days, and now they are filing the same within the condonable period of another 30 days, Due to lack of proper understanding of the order, knowledge and guidance, such a delay has occurred.

c. The appellant submits that the partner of the appellant who is authorized person was also on tour during these last days of filing of appeals due to festival season, and social functions. Hence the appeal could not be filed in time. It is prayed that a condonation of delay in filing of appeals by **28** days may kindly be granted and the appeals may be heard on merits.

5. Personal Hearing was held on 19.04.2016, Shri R.Subramanya,Advocate appeared for Hearing on behalf of the appellant. He reiterated the written submissions filed by them earlier. He requested to allow the appeal and submitted Copy of Case Law [1] International Packaging Products P. Ltd. V. CCEC&ST Reported At 2016 (1) TMI –CSTAT,Ahmedabad. I have gone through all records, the impugned order and written submissions as well as submissions made during personal hearing by the appellant.I find that, the appellant could not file the appeal in the prescribed period of 60 days, and they are filing the same within the condonable period of another 30 days. They have requested for condonation of delay in filing of appeals by **28** days. The Prayer is granted for condonation of delay, under section 35 of the Central Excise Act 1944.

6. I find that issue to be decided is admissibility of the Cenvat credit of service tax availed towards Courier services, Membership fees, Cab operator service and Air travel agency services.

I find that, **'input service'** is defined in Rule 2 (l) of the Cenvat Credit Rules, 2004. *"input service" means any service;*

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

7. Regarding input services i.e. Courier services, and Air travel agency services, *I find that,* Rule 2(i) of Cenvat Credit Rules,2004 defines the eligible category of Services for availing credit and primarily, from the definition laid down it clearly emerges that the services should have been used directly or indirectly in the manufacture or clearance of their final products. There should be a nexus between the 'input service' and the activity of 'manufacture'. In the present case,I find that there is a nexus between the said services and manufacturing/clearance activities of the appellant. I find that that the definition of input service includes the services which are used in activities relating to business. The definition by specifies some of the activities "accounting, auditing, financing, recruitment and quality control, coaching and training, computer net working, credit rating, share registry and security, the said specified activities do merely denote some activities related to business which is only illustrative and not exhaustive and the scope and the definition of the terms "in relation to" and "as such" is very wide and connotes all the activities related to business. From this, it is a logical conclusion that manufacturer/output service provider can take credit of the Service Tax paid on all activities related to business, which are specified in the

expanded inclusive definition of "input service". Further. I find that, the expression Business is an integrated activity and is not confined/ Restricted to mere manufacture of the product. Therefore, activities 'in relation to business' can cover all the activities that are related to the functioning of a business. I rely on the decisions of 1. International Packaging Products P. Ltd. V. CCEC&ST VAPI Reported At 2016 (1) TMI – CSTAT,Ahmedabad. 2. Montage Enterprises P. Ltd. v.CCE &ST indore cited in 2015 (38) STR 219(Tr.del). 3. TufropesP.Ltd.V.CCE,Vapi cited in 2012[277]ELT359 [tri.Ahmd].

8. Further, I find that the CESTAT order in appellant's identical case, wherein the department appeals were rejected and cenvat credit on courier services was allowed. In the CESTAT Order No .A/11941195/WZB/AHD/2010 dated 12-8-2010; the Hon'ble CESTAT has held that: *"in this case courier services have been used in the clearances of samples / documents relating to goods as observed by the Commissioner. The clearances of documents relating to goods / samples is definitely in relation to manufacture as well as business activities and is clearly covered by the definition of the input services. Hon'ble Bombay High Court in the case of Coca Cola India Pvt. Ltd - 2009 (242) ELT 168 (Born) has explained the meaning of the input service and the issue is squarely covered by this decision."*

In view of above, I hold that said credit is admissible to the appellant.

9. Regarding cenvat credit taken on rent a cab service ,I find that said service is not treated as "input service" w.e.f 01-04-2011 as the same are excluded from the purview of Rule 2(1) of the CCR 2004 vide amendment by Noti .no. 03/2011 C.E. [NT] dated 01-03-2011. Therefore, I hold that Cenvat Credit of service tax for such service is not admissible.

10. As regards, the cenvat credit taken on Member ship fees, I find that, the membership is in regard to the technical literatures, which is required for betterment of the quality and improvising the quality of the products. Therefore it is indirectly related to the manufacturing activities. Even otherwise there are numerous case laws were various higher appellate authorities have held that if an assessee has paid the service tax and taken credit on the basis of valid documents, its eligibility to such credit cannot be questioned. I would like to cite the case of *Ultratech Cement Ltd.* decided by the Hon'ble High Court of Bombay 2010 (260) E.L.T.369 (Bom.) 2010 (20) S.T.R. 577 (Bom.) wherein the Hon'ble High Court has held that any service

which has nexus with the business activity of the appellant, whether it is manufacturing or rendering service, has to be treated as "input service" coming within the purview of Rule 2(I) of the CENVAT Credit Rules, 2004. Therefore, in light of aforesaid case laws, I hold that said service tax credit is eligible to the appellants.

11. In view of the foregoing facts, I find that the appellant have informed to the Department about availment of said Cenvat credit. I find that the appellant has not suppressed the material facts and not contravened the provisions of Rules 2(I), read with Rule 3(1) of the Cenvat Credit Rules, 2004. I hold that once the charges of Suppression of facts not sustained, the penal provision under Rule 15(2) read with Section 11 AC, cannot be invoked in this case.

12. In view of foregoing discussions and findings, I partly allow the appeal filed by the appellant. The appeal stands disposed of as above.

[Uma Shanker]
Commissioner (Appeals-II)
Central Excise,Ahmedabad

Attested

20-07-16

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

By Regd. Post A. D

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Copy to :-

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