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, Ambavadi, Ahmedabad:380015

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.) : **V2(30) 12/Ahd-II/Appeals-II/ 2015-16** 933 to 937

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 0027 -16-17**

दिनांक (Date): **22.07.2016,** जारी करने की तारीख (Date of issue): 27/07/16

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.**69-73/ADC/2015/DSN Dated: 20/03/2015** issued by:Additional.Commissioner.,Central Excise (Div-III), Ahmedabad-II

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

**M/s Cadila Pharmaceuticals 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 अ-तत 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 durirg 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 |

G. Ilu

केंद्रीय उत्पाद शुल्क आयुक्तालय, (अपील-II) OFFICE OF THE COMMISSIONER (APPEALS-II) CENTRAL EXCISE अहमदाबाद

Cont...2

(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 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।

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.

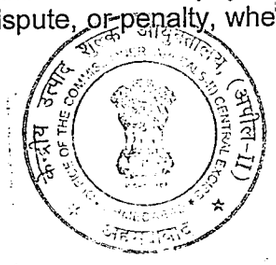
⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

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

The subject appeal is filed by M/s. Cadila Pharmaceuticals Ltd. S.no.1389,Trasad Road, Dholka, Dist: Ahmedabad(hereinafter referred to as *'the appellant'*) against the Order in Original No.69-73/ADC/2015-DSN dated 20-3-15 (hereinafter referred to as *'the impugned order'*) passed by the Additional Commissioner, Central Excise, Ahmedabad-II (hereinafter referred to as *'the adjudicating authority'*). The appellant is engaged in the manufacture of Pharmaceutical Products falling under Chapter 30 of the Central Excise Tariff Act, 1985[hereinafter referred as CETA-1985] they are also availing the benefit of CENVAT credit under Cenvat Credit Rules, 2004.

2. The facts in brief of the case is, during the course of audit by the department, it was revealed that the appellant had appointed 24 Consignee & Sales agents for distributing their final products. The appellant has availed credit of Service Tax under the head "Clearing and Forwarding Services" on the basis of 'Debit notes' which is not considered as valid documents under Rule 9(1) and 9(2)of the cenvat Credit Rules, 2004. The activity carried out by the said C&F agents was beyond the place of removal and therefore, same was not covered- under the definition of input service. The said appellant wrongly availed the Cenvat credit which is not admissible to them. Further, it appeared that the Debit Notes, on the basis of which credit was availed, such documents cannot be considered valid for availing credit. the same did not fall within the ambit of the definition of input service under Rule 2(l) of the Cenvat Rules, 2004 and also did not fall within Rule 4(7), Rule 9(1) a Rule 9(2) of Cenvat Credit Rules, the appellant has contravened the provision of Rule 3(1) read with Rule 2(1) of Cenvat Credit Rules, Therefore said Cenvat Credit is disallowed in terms of the provisions of Rule 14 of the CCR 2004 read with Section11A (1) of CEA1944,and liable to penalty under Rule 15(1) of theCCR, 2004. Interest also liable to be recovered under the provisions of Rule 14 of the Cenvat Credit Rules, 2004.five Show Cause notices covering the period from November-2009 to sept-2013 ,were issued. The said SCN's were adjudicated vide the impugned order, wherein the adjudicating authority confirmed the demands along with applicable interest and imposed penalties.

3. Being aggrieved with the impugned order the appellant has filed the instant appeal, on the following grounds and contended that:

They have appointed 24 consignee and sales agents, throughout the country for distributing their finished goods. Such agents have charged for the services and, they have paid service tax thereon under the category of C&F Agents. this issue is covered by the decision of Hon'ble High Court of Gujarat in the case of Cadila Healthcare Ltd., reported in 2013 (30) S.T.R. 3 (Guj.). The relevant para is reproduced as under;

*."**5.4** Clearing and Forwarding services: In this regard it was the case of the assessee that service rendered by C & agents were in relation to sales promotionand,therefore,inputservice.... .....*

*the services rendered by the C & F agents cannot be said to be in the nature of sales promotion. This issue stands answered accordingly, in favour of the assessee and against the revenue."*

As regards the issue of the documents on which the credit has been availed, it is submitted that the debit note is same as invoice and the requirement of Rule 4, as regards the information to be contained, is also fulfilled. They relied on following decisions;

1.2014(34)STR66(Tri.Ahmd.]CCEX.DAMANVJALARAMPLASTICPACK42014(8) TMI342[CESTATMUMBAI] 2.MAHINDRA & MAHINDRA LTD V/s CCEX2014 3. TMI 290 CESTAT[Ahm] Elecon Information Technology Ltd. V CCE,Vadadora-

That the provision of section 11A required mala fide intention in order to invoke the extended period. They Rely upon Gujarat High Court decision in the case of Meghmani Dyes - 2013 (288) ELT 514 (Guj.) The matter involved question of interpretation of provisions.

4. Personal hearing in the matter was held on 04.05.2016, wherein Shri S.J. Vyas, Advocate, appeared on behalf of the appellant and reiterated the submissions made in their grounds of appeal. he submitted copies of case laws. I have carefully gone through the records of the case as well as the written submissions made by the appellant. I find that the issue to be decided is the admissibility of Cenvat Credit taken on the strength of Debit Notes issued by their Consignment Sales Agents. The denial has been on two grounds, namely a) it do not fall within the definition of "input service" as given in Cenvat Credit Rules, 2004, b ) while the sub rule (1) of rule 9 of CCR prescribes list of documents on the basis of which Cenvat credit availment by the manufacturer and the sub-rule (2)

thereof further providing that it should contain all the particulars as prescribed under the Service Tax Rules1994, the debit note on which credit has been taken are not prescribed document. I find that the Hon'able High Court of Gujarat, in the case of Cadila Healthcare Ltd, reported at 2013 (30) STR 3,[GUJ] has decided the issue of premises of the C &F Agent would be the place of removal in term of Central Excise Act,1944.Inview of above, I hold that services of Clearing and Forwarding Agent is an input service for the appellant and admissible for Cenvat credit.

5. There is another allegation that the debit notes on which credit has been taken are not prescribed documents in terms of sub rule (1) of rule 9 of the Credit rules nor do they contain all the essential particulars as mandated in sub rule (2) of rule 9 ibid and therefore, the credit taken is not admissible. It should contain the particulars as specified in Rule 4A of Service Tax Rules1994.The Rule 4A supra provides that;

*"Every person providing taxable service shall not later than thirty days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable se earlier, issue an invoice, a bill or, as the case may be, a challan signed by such persons or a person authorized by him in respect of taxable service provided or agreed to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely (I) the name, address and the registration number of such person; (ii) the name and address of the person receiving taxable service; (iii) description and value of taxable service provided or agreed to be provided; and (iv) the service tax payable thereon."*

In fact, the sub rule (2) of rule 9 reiterates the above requirement by stating that; *"No CENVAT credit under sub-rule (1) shall be taken unless alt the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document"*

6, The instant notice clearly alleges that they have continued to follow the same practice of wrongful availment and utilization of CENVAT credit. The instant show cause notices issued on the ground that the debit notes does not contain the information. I rely on the decisions of 1. CCE, Indore v Gwalior Chemicals Ind, Ltd at 2011 (274]ELT

97 [T]] 2. CCE, Daman Vs Jalaram Plastic Mack reported at 2014 (34) ELT 66. 3.M/s Elecon Information Technology Ltd Vs CCE, .Vadodara-reported at 2014 (4) TMI 290.

7. Therefore, I conclude that the debit notes on which the said appellant has taken the disputed cenvat credit on the basis of 'Debit notes' can be considered as valid documents under Rule 9(1) and 9(2] of the cenvat Credit Rules,2004, if all the debit notes contains the information which is required to be mentioned as stipulated in sub Rule 9(2) of the Cenvat Credit Rules 2004, and then cenvat credit should be allowed to the appellant.

8. In view of the foregoing discussion and findings, the matter is remanded back to the adjudication authority for proper verification, whether all debit notes contains the information which is required to be mentioned as stipulated in sub Rule 9(2) of the Cenvat Credit Rules 2004, and then cenvat credit should be allowed to the appellant. The appeal stands disposed of as above.

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

Attested

25-07-16

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

By Regd. Post A. D

M/s. Cadila Pharmaceuticals Ltd.,
Survey no.1389,
Trasad Road,
Ta-Dholka,
Dist- Ahmedabad

Copy to :

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