



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



रजिस्टर डाक ए .डी .द्वारा

V2(30) 38/EA-2/ Ahd-II / 2014-15 & / 1964 to 1968

क फाइल संख्या (File No.): V2(30) 53&54/Ahd-II / 2015-16

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 0040-41-42 -16-17

दिनांक (Date): 23.09.2016, जारी करने की तारीख (Date of issue): 27/09/16

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. As per OIO's,

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

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

M/s Cadila Healthcare 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 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

(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. file



- (c) In case of goods exported outside India export to Nepai 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 :-

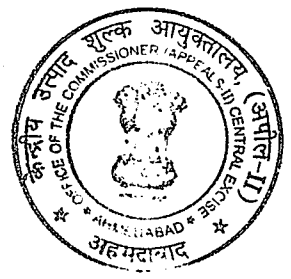
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी 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 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 वहाँ 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 वहाँ 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।



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 पढ़ी कार्य से बचने के लिए यथारिथति 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथारिथति 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।

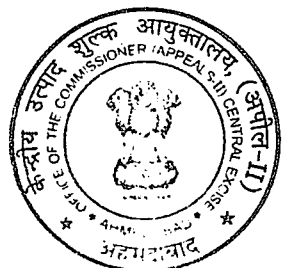
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 appeal is filed by the department Under Section 35(2) Of Central Excise Act,1944,against OIONo.72/REFUND/2014[hereinafter referred to as 'the impugned order) passed By The Deputy Commissioner, Central Excise, Division-IV,Ahmedabad-II,(hereinafter referred to as 'the adjudicating authority') in favour of M/s. Cadila Healthcare Limited, Survey No. 417, Sarkhej-Bavla Road, N.H8A, Moraiya, Tal. Sanand, Distt. Ahmedabad [hereinafter referred to as 'the assessee] and is engaged in the manufacture of Pharmaceutical Products falling under chapter 48 of the Central Excise Tariff Act,1985 [hereinafter referred as CETA-1985]. The assessee has also filed appeals against OIO No.7/REFUND/2015 & No. 10/REFUND/2015.

2. Briefly stated the fact of the case is, the assessee had filed service tax refund claim for Rs. 1490867/- on 24-9-14 for the period from 01.03.2014 to 31.5.2014, under Notification No. 41/2012-ST dated 29.06.2012,for Service tax paid on the Courier Services utilized in the export of excisable goods. The adjudicating authority vide above order sanctioned the refund claim under the provisions of Not.No.41/2012 ST, dated 29.06.2012.

3. The Department has filed an appeal against OIO No. 72/Refund/2014 dated 09.12.2014, on the following grounds:- .

Refund has been sanctioned under the provisions of Not. No.41/2012-ST, dated 29.06.2012 in respect of services utilized in the export of excisable goods. The said notification provides refund of service tax paid on specified services used in exports of goods beyond the place of removal. Service tax refund of services under said notification is admissible only for "specified services" as defined under Notification. (A)"specified services" means;

[i] in the case of excisable goods, taxable services that have been used **beyond the place of removal**, for the export of said goods;

[ii] in the case of goods other than (i) above, taxable services used for the export of said goods;

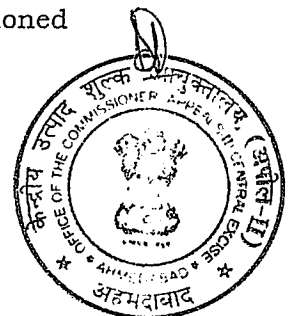
but shall not include any service mentioned in sub-clauses (A), (B), (BA) and (C) of clause (I) of rule (2) of the CENVAT Credit Rules, 2004.

B. In case of export on FOB basis place of delivery is the port of shipment. Therefore, the services availed up to that point would become service availed **up to the place of removal**. The Board has clarified vide Circular No. 988/12/2014-CX dated 20.10.2014 as reproduced below: *"It is reiterated that the place of removal needs to be ascertained inis the relevant consideration to determine the place of removal"*

C. Further, Board vide Circular No. 999/6/2015-CX dated 28.02.2015 has clarified that:-*"In the case of clearance of goods for export by manufacturer exporter.....and the place of removal would be this Port/ICD/CFS"* Thus, the place of removal in the instant case is port of export and said services are used up to the port of export. Thus, the benefit of refund under the said Notification shall not be applicable to these services as not been used beyond the place of removal.

4. Further, Vide above said OIO's The adjudicating authority has rejected two refund claims of Rs.18,25,542/-and Rs.995335/-on the grounds mentioned hereinabove .

The assessee has filed present appeals on the following main grounds.



That Filing an appeal cannot be ground to reject the refund claim in as much as that the Order In Original has not been stayed nor set aside. Therefore the order is operative and it is binding. The Board has also issued the circular No. 988 and 999 to clarify how to ascertain the Place of removal.

That under Notification No.41/2012-ST, it provides that the refund claim is to be claimed on the percentage of FOB value when the refund is sought as per the paragraph 2. In fact Notification No.41/2012-ST is issued to specifically provide the refund by way of rebate on the taxable services used at post manufacture/post clearance stage by the exporter and therefore the place of removal has got no relevancy so far as refund of service tax under Notification No.41/2012-ST is concerned.

That there is catena of judgments holding that substantial benefit cannot be denied for procedural infraction. They rely In the case of M/s. Suksha International & Nutan Gems & Anr reported in 1989 (39) ELT 503 (SC), 2. M/s. A.V.Narsimhlu reported in 1983 (13) ELT 1534 (S.C.), 3. M/s. For-mika India reported in 1995 (77) ELT 511 (S.C.) 4. M/s. Mangalore Chemicals and Fertilizers Ltd reported in 1991 (55) ELT 437 (SC) 5. M/s Rajdhani Crafts reported in 2013 (32) STR 607 (T- Del) and in case of 6. M/s Stovec Industries Ltd reported in 2014 (33) STR 155 (T-Ahmd.) it has been held that services used for exporting the goods are eligible for Cenvat credit under the CCR 2004.

5. Personal hearing was held on 03-08-16. Shri Ketan Vyas Manager [excise] attended Personal hearing on behalf of the assessee. He has filed written submissions dated 18-8-15. I have gone through all records placed before me in the form of the impugned order and written submissions of department as well as submissions made by the assessee. I find that the issue to be decided is whether the refund claim filed by the assessee are admissible or otherwise. I find that, during the course of export, the assessee availing input services which have been specified under Notification No. 41/2012-ST dated 29.06.2012. The respondent has filed service tax refund claim of Rs.1490867/ for taxable services used in export of goods. The adjudicating authority vide above said order has sanctioned the refund under the provisions of Section 11B of the Central Excise Act 1944. however vide mentioned OIO's the adjudicating authority has rejected other two refund claim filed by the assessee.

6. I have gone through refund claim Records, documents for the exports made during the said period in respect of payment of service tax made by them on the specified services. I proceed to decide correctness of the said refund claims on the basis of records available with me. I find that, vide Notification No.41/2012-Service Tax dated 29.06.2012 is effective from 01.07.2012 grants rebate of service tax paid (hereinafter referred to as rebate) on the taxable services which are received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods, subject to following conditions:

[a] *The exemption shall be claimed by the exporter of the goods for the specified service received and used by the exporter for export of the said goods;*

[b] *The exemption shall be provided by way of refund of service tax paid on the specified service used for export of the said goods;*

[c] *The exporter claiming the exemption has actually paid the service tax on the specified service as Notification No. 41/2012-Service Tax dated 29.06.2012 is effective from 01.07.2012;*



Explanation. - For the purposes of this notification,-

(A) "Specified services" means-

[i] *in the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;*

[ii] *in the case of goods other than (i) above, taxable services used for the export of said goods; but shall not include any service mentioned in sub-clauses (A), (B), (BA) and (C) of clause (I) of rule (2) of the CENVAT Credit Rules, 2004.*

7. In case of export on FOB basis place of delivery is the port of shipment. Therefore, the services availed up to that point would become service availed up to the place of removal. I also find that the Board vide Circular No. 999/6/2015-CX dated 28.02.2015 has clarified that:-" In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS" Thus, the place of removal in the instant case is port of export and said services are used up to the port of export. Thus, the benefit of refund under the Notification No. 41/2012 dated 29.06.2012 shall not be applicable to these services, as not been used beyond the place of removal.

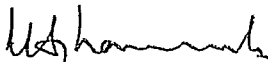
8. I find that as per Notification No.41/2012-ST dated 29.06.2012 which is effective from 01.07.2012; the said credit is not admissible for refund of service tax to the assessee.

The said notification has been amended vide Notification No. 01/2016-ST dated 03.02.2016 and accordingly, in the 'Explanation' in Clause (A) for the sub-clause (i), the following sub-clause has been substituted.

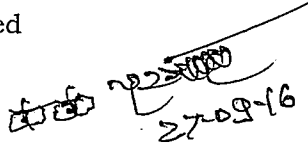
"(i) in the case of excisable goods, taxable service that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export;"

The said amendment has retrospective effect from the date of application of the parent notification i.e. from 01.07.2012. Accordingly, I hold that the assessee is eligible for said service tax refund.

9. In view of the foregoing discussion and findings, I reject the appeal filed by the department. I allow both the appeals filed by the assessee. The appeals stands disposed of as above.


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

Attested


[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 Asstt. Commissioner, Central Excise, Division-IV, Ahmedabad-II
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard file.
6. PA file.

