



सत्यमेव जयते

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

शुल्क::

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,
7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise
पोलिटेकनिक के पास, Building,
आम्बवाडी, अहमदाबाद : 380015 Near Polytechnic,
Ambavadi,
Ahmedabad:380015



रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(30) 15/EA-2/Ahd-II / 2015-16 / 2785-2789
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 057 -16-17
दिनांक (Date): 27.10.2016, जारी करने की तारीख (Date of issue): 08/11/16

श्री उमा शंकर, आयुक्त(अपील-II) द्वारा पारित
Passed by Shri Uma Shanker , Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद- II, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No.11/Refund/2015-16 Dated: 21/09/2015
issued by:Assistant Commissioner.,Central Excise (Div-III), Ahmedabad-II

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

M/s Amneal Pharmaceuticals Company(I) Pvt. 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 ।

A. J.



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 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 :-

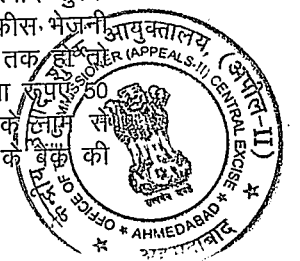
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 मेटल हास्पिटल 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 इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण की गई अपील के विरुद्ध 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 है वहां 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 रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के 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 पढी 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 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 appeal is filed by the department (hereinafter referred to as 'the appellant') Under Section 35(2) Of Central Excise Act,1944, against M/S. Amneal Pharmaceuticals Company (I) Pvt. Ltd.(100% EOU) 882/1,871, Rajoda, Dist: Ahmedabad(herein after referred as "the respondent) against OIO No 11/refund/2015-16 (hereinafter referred to as 'the impugned orders) Passed By The Assistant Commissioner, Central Excise, Division-III,Ahmedabad-II,(hereinafter referred to as 'the adjudicating authority') they are engaged in the manufacture of P.P. Medicaments falling under Chapter 30 of the CETA, 1985 [hereinafter referred as CETA-1985]. and also availing CENVAT credit under CENVAT Credit Rules, 2004.

2. Brief facts of the case is, the respondent had filed claim for refund of Cenvat credit for oct-14 to dec-14, in respect of Input and Input Services amounting to Rs.3287483/- under the provisions of Rule 5 of Cenvat Credit Rules, 2004 read with Notification No: 27/2012-CE (NT) dated 18.06.2012.the Adjudicating Authority has noticed that as per the formula given in Rule 5 of Cenvat Credit Rules, 2004, the final admissible amount of refund as filed by them, vide impugned orders has sanctioned refund claims as mentioned above under Rule 5 of Cenvat Credit Rules, 2004 and Notification No. 27/2012 CE(NT) dated 18.06.2012.

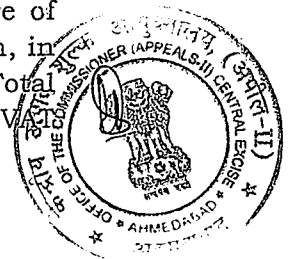
3. Being aggrieved by the above said OIO, the appellant have filed these appeals on the following main grounds;

The refund claim filed by the respondent under the provisions of Rule 5 of cenvat Credit Rules, 2004, read with Notification No. 5/2006-CE (NT), dated 14.03.2006. The said Notification provides the refund on unutilized balance of Cenvat Credit lying with 100% EOU unit ,in the case if the assessee is not in position to utilize in clearance of goods.

The refund of input and input services had been sanctioned under the provisions of Section 11 B of the Central Excise Act, 1944,read with Not. No.41/2012- ST, dated 29.06.2012. The said notification provides refund of service tax paid on specified services used in exports of goods beyond place of removal. The provisions to grant refund in the aforesaid both the notifications and concepts are contrary to each other. Thus, the adjudicating authority made error in processing and sanctioning of the refund. In the present case the respondent is 100% EOU and is a manufacturer exporter and cleared the goods on FOB basis. 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,place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS"

In order to avail the benefit of Rule 5 of CENVAT Credit Rules, 2004, the respondent has shown the transactions for availment of Cenvat Credit amounting to Rs.17,19,170/- in their books of account in the relevant quarter, though the subject goods/ input services might have been received by them prior to the relevant period. The matter was required to be investigated thoroughly before passing of the impugned order the said aspect was to be enquired before granting of refund claim.

Scrutiny of the documents such as Cenvat Credit register ,has shown debit entries during the said period in the said Cenvat Credit Account, no were the nature of said transactions clarified by the respondent in their refund claim. As such, in the absence of same, how the adjudicating authority has ascertained "Total turnover" for granting of refund in the prescribed formula in Rule 5 of the CENVAT



Credit Rules, 2004. that the adjudicating authority has failed to ascertain correct amount of Net Cenvat as well as correct amount of Total Turnover, which resulted into erroneous refund sanctioned to the respondent under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No. 27/2012 CE (NT) dated 18.06.2012.

4. Personal hearing was held on 18.07.2016,19-8-16 &13-9-16, no one attended of behalf of the respondent. I have gone through all records placed before me in the form of the impugned order and written submissions of department. I find that, the respondent had filed claims for refund of Cenvat credit, under the provisions of Rule 5 of Cenvat Credit Rules, 2004 read with Notification No: 27/2012-CE (NT) dated 18.06.2012 .however, the Adjudicating Authority vide impugned orders has sanctioned refund claim of Cenvat credit as mentioned above under Notification No. 41/2012-S.T., dated 29.06.2012.

5. I find that, the refund claim filed under the provisions of Rule 5 of cenvat Credit Rules, 2004, read with Notification No. 5/2006-CE (NT), dated 14.03.2006. The said Notification provides the refund on unutilized balance of Cenvat Credit lying with 100% EOU unit ,in the case if the assessee is not in position to utilize in clearance of goods.

6. I also find that, the refund of input and input services had been sanctioned under Not. No.41/2012- ST,dated 29.06.2012. The said notification provides refund of service tax paid on specified services used in exports of goods beyond place of removal. I find that, the provisions to grant refund in the aforesaid both the notifications and concepts are contrary to each other. Thus, the adjudicating authority made an error in processing and sanctioning of the said refund. In the present case respondent is 100% EOU and is a manufacturer exporter and cleared the goods on FOB basis. Further boards 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 place of removal would be this Port/ICD/CFS"

7. I find that, The impugned orders does not appear to be legal & proper as the same has been passed without proper verification of the documents and wrong Interpretation of the provisions of Rule 5 of CENVAT Credit Rules, 2004 read with Notification No. 27/2012 CE (NT) dated 18.06.2012. The scrutiny of the relevant documents of cenvat credit,it was revealed that credit taken on the strength of invoices which were though issued by the buyers/service providers during the period of aug.2012 to first fortnight of Sept,2014 .

Further, I find that, as per Rule 5 of CENVAT Credit Rules, 2004 :-

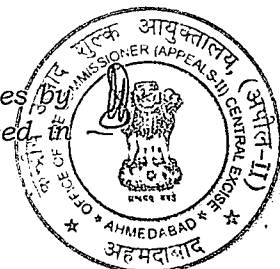
" A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette:

$$\text{Refund amount} = \frac{\text{(Export turnover of goods + Export turnover of services)}}{\text{Total turnover}} \times \text{Net CENVAT credit}$$

Where,

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net CENVAT credit" means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period."



8. I find that, In order to avail benefit of the Rule 5 of CENVAT Credit Rules, 2004, the respondent has allegedly shown the transactions for availment of Cenvat Credit amounting to Rs.17,19,170/- in their books of account in the relevant quarter, though the subject goods/ input services might have been received by them prior to the relevant period. The matter is required to be investigated thoroughly before passing of the impugned order.

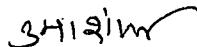
9. I find that, the documents such as Cenvat Credit register maintained by the respondent has shown debit entries , in the said Cenvat Credit Account but the details of such transactions neither were discussed by Adjudicating authority nor were the nature of said transactions clarified by the assessee in their refund claim. As such, in the absence of same, it is not understood as to how the adjudicating authority has ascertained "Total turnover" for granting of refund in the prescribed formula in Rule 5 of the CENVAT Credit Rules, 2004. It appeared that the adjudicating authority without verifying the facts, had merely relied upon the data provided by the respondent and sanctioned the refund claims.

10. I find that, under Rule 5 of CENVAT Credit Rules, 2004, it is evident that the adjudicating authority has failed to ascertain correct amount of Net Cenvat as well as correct amount of Total Turnover, which resulted into erroneous refund sanctioned to the respondent. Therefore, I hold that the impugned orders are not legal and required to be remanded back to the original authority.

11. In view of the foregoing discussion and findings, I set aside the impugned order and remand back to the original authority to decide the matter afresh, after verification of relevant documents/records.

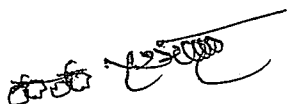
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(उमा शंकर)

आयुक्त (अपील्स - II)

Attested


[K.K.Parmar)

Superintendent (Appeals-II)
Central excise, Ahmedabad.

By Regd. Post A. D

M/s .Amneal Pharmaceuticals Company (I) Pvt. Ltd.,
882/1, 871,
Vill- Rajoda,
Ta-Bavla,
Dist: Ahmedabad.

Copy to :

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

