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

सत्यमेव जयते

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(29)7 /Ahd-II/Appeals-II/ 2016-17** /311 to 315
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 086-16-17**
दिनांक (Date): **16.02.2017,** जारी करने की तारीख (Date of issue): 21/02/17
श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
Passed by **Shri Uma Shanker** , Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद- II, आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No . **17/AC/DEMAND/15-16 Dated: 04/02/16**
issued by: Assistant Commissioner Central Excise (Div-I), Ahmedabad-II

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

M/s Halcyon Labs 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 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 |

G. file

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

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 ज़मा 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. Halcyon Labs, Pvt. Ltd., Plot No.409, Phase-IV, GIDC Industrial Estate, Naroda, Ahmedabad (hereinafter referred to as *'the appellant'*) against the Order in Original No.17/AC/Demand/15-16 (hereinafter referred to as *'the impugned order'*) passed by the Assistant Commissioner, Central Excise, Division-I, Ahmedabad-II (hereinafter referred to as *'the adjudicating authority'*). The appellant is engaged in the manufacture of Bulk Drugs & Chemicals falling under CETH 29 of the Central Excise Tariff Act, 1985[hereinafter referred as CETA-1985].

2. The facts in brief of the case is that, the appellant is engaged in the manufacture and sale of Bulk Drugs & Chemicals, and availing the facility of CENVAT credit of duty paid on inputs, Capital Goods as well as Service Tax. The show cause notice was issued periodically after audit objection raised by the EA - 2000 audit. As per the objection, it was observed that the said appellant was also engaged in manufacture of goods on Job-work basis under Noti. No. 214/86 C.E. dtd. 25.03.1986. This notification exempt the goods manufactured in a factory as a Job work. On verification, it was observed that the appellant had utilized their own inputs on which they had availed Cenvat credit, in the manufacture of goods, manufactured on Job work basis, which were ultimately cleared without payment of duty. Moreover as per Rule 6(2) of the Cenvat Credit Rules, 2004 the appellant was required to maintain separate accounts for receipt, consumption and inventory of inputs and input services meant for use in the manufacture of exempted goods and take Cenvat Credit on only that quantity of inputs which are intended for use in the manufacture of dutiable goods. The appellant was required to pay/reverse the proportionate Cenvat Credit as per Rule 6(3) of Cenvat Credit Rules, 2004 which they have not paid/reversed. Hence the appellant had contravened the provision of Rule 6 (1), Rule 6 (2) & Rule 6(3) of Cenvat Credit Rules, 2004 read with Rule 4 of Central Excise Rules, 2002. The Cenvatable raw materials were used for manufacturing of final products on job work basis (and cleared at NIL rate of duty), proportionate Cenvat Credit on the said raw materials of Rs. 261456/- for the period from 01-4-2014 to 31-12-14 . The said Cenvat Credit was wrongly availed by the appellant on the inputs which were used in the manufacture of excisable goods on job work basis and cleared at NIL rate of duty. Therefore the appellant was issued SCN for demand and recovery of Cenvat credit under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with provisions of Sub Section (1) of Section 11A of the Central Excise Act, 1944,with Penalty under the provisions of Rule 15(1) of Cenvat Credit Rules, 2004. The said SCN was adjudicated vide the impugned order, and confirmed the demand and imposed penalty of Rs. 26150/- under Rule 15(1) of CCR 2004, along with interest.

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

- the impugned order is incorrect and not maintainable;
- they relied on the decisions in the following case laws :

➢ CCE Vs. Happy Forging Ltd – 2011-TIOL-34-HC-P&H-CX.

➢ Sterlite Industries (I) Ltd Vs. CCE – 2005(183) ELT 353 (Tri.-LB).

➢ Commissioner Vs. Sterlite Inds (I) Ltd – 2009 (244) ELT A89.

➢ Escorts Ltd – 2004 (171) ELT 145 (S.C)

➢ CCE Vs. Bharath Fritz Werner Ltd – 2007 (218) ELT 177 (Kar.)

The fact as to who is the purchaser of material, or from where the material is received, is not relevant nor the basis for decision. It is the removal of finished goods by job worker under exemption and hence applicability of Rule 6 which is the issue. When the demand is not sustainable, no question of penalty arises. Similarly the interest will also not survive.

4. Personal hearing was accorded on 09.012.2016, Shri S.J.Vyas,Advocate, appeared on behalf of the appellant and reiterated the submissions made vide their appeal memorandum. He cited the CESTAT Orders No.A/1523-1524/WZB/AHD/2012 dated 12.10.2012 and also dtd.20-6-13 and 28-4-14. Copy of OIA no.124/2013[AHDII] CE/AK/ COMMMR [A] dated 19-6-13 in their own cases, and submitted that following the same ratio, appeal be allowed. I have carefully gone through the case records, facts of the case, submissions made by the appellant and the case laws cited by the appellant.

5. I find that the impugned order has been issued with respect to the show cause notice issued periodically, after the Audit Objection raised by the EA-2000 Audit. I find that during the course of Hearing the appellant has cited the Hon'able CESTAT Order No A/1523-1524/WZB/AHD/2012 dated 12.10.2012 in their own case. The said Order has been issued in respect of the Appeal filed by the appellant against the OIA No. 53/2012(Ahd-II)CE/MM/Commr.(A)/Ahd dated 21.02.2012 & OIA No. 54 to 55/2012(Ahd-II)CE/MM/Commr.(A)/Ahd dated 21.02.2012 passed on the identical issue for the previous period. Vide the said Order, the Hon'able CESTAT has held as under:

1. The appellant is engaged in the manufacturing of goods on Job work basis as well as on their own account. The appellant availed the Cenvat Credit of Duty paid on inputs were purchased and used by them in manufacturing of goods on job-work basis.

2. Taking a view that the goods manufactured on job work under the Notification No. 214/86 are exempted goods and, therefore, credit of the duty paid on inputs could not have taken, proceedings were initiated for recovery of Cenvat credit availed by the appellants on inputs purchased and used by them in the manufacture of goods on job work basis which culminated in the confirmation of demand of Cenvat credit with interest and penalty has also been imposed.

3. *Both sides agree that the very same issue has come up before the Honourable High Court of Punjab & Haryana in the case of Happy Forging Ltd. [2011-(265)-ELT-197 (P&H)] wherein the Honourable High Court took the view that credit is admissible. Since the issue is squarely covered by the decision of the Honourable High Court of Punjab & Haryana, respectfully following the same, both the appeals are allowed with consequential relief, if any, to the appellants.*

6. In view of above, it is clear that the Hon'able CESTAT had decided this issue in favour of the appellant and it is very surprising that the adjudicating authority has not maintained the judicial discipline. Such act of bravado in discharge of judicial function is deplorable. I therefore, hold that the impugned order is no more sustainable.

7. In view of the foregoing discussion and findings, I set aside the impugned order and allow the appeal filed by the appellant.

8. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

9. 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. Halcyon Labs, Pvt. Ltd.,
Plot No.409, Phase-IV,
GIDC Industrial Estate,
Naroda,
Ahmedabad.

Copy to :

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

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