

	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,	केंद्रीय उत्पाद शुल्क भवन,	7 th Floor, Central Excise Building,
सत्यमेव जयते	सातवीं मंजिल, पॉलिटेक्निक के पास,	Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015	आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
079-26305065		टेलिफैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(30)51 /Ahd-II/Appeals-II/ 2016-17 / 10088 to 10086
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 125-17-18
 दिनांक (Date): 13.10.2017 जारी करने की तारीख (Date of issue): 27-11-17
 श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
 Passed by Shri Uma Shanker , Commissioner (Appeals)

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. _18/AC/D/2016/UKG_ Dated: 21.04.2016 issued
 by: Assistant 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 ।

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 दिनोंक 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 :-

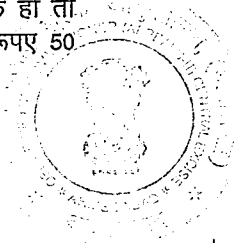
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 मैटल 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 इए-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 ओर लगाया गया जुर्माना रूपर 5 लाख या उससे कम है वहां रूपर 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहां रूपर 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।

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 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 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 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 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।

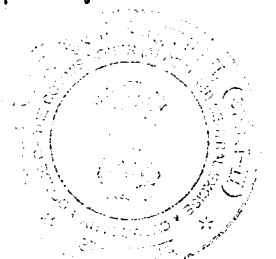
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

This order arises on account of an appeal filed by M/s. Cadila Healthcare Ltd., Survey No.417-419,420, Sarkhej-Bavla road, Village: Moraiya, Taluka Sanad, Dist. Ahmedabad (hereinafter referred to as 'the Appellant') against Order-in-Original No. 18/AC/D/2016/UKG dated 21.04.2016 (hereinafter referred to as the 'Impugned order') passed by the Assistant Commissioner, Central Excise, Division-IV, Ahmedabad-II. (hereinafter referred to as the "Adjudicating Authority").

2. Briefly stated the facts of the case are that the appellant is engaged in the manufacture of Pharmaceuticals Products under Chapter 30 of the Central Excise Tariff Act,1985,and availing benefit of CENVAT Credit as per the provisions of CENVAT Credit Rules,2004. During the course of audit of the Central Excise records, it was observed that the appellant had availed Cenvat Credit on Metallic Stickers as credit on Capital goods which are affixed on the machines. It was found that the goods viz. Metallic Stickers, falls under Chapter 76 and said goods were not covered by the definition of Capital goods as given in Rule 2 of CENVAT Credit Rules, 2004. The appellant had taken CENVAT credit for the period April 2009 to March 2013 amounting to Rs.41,531/-, therefore CENVAT Credit wrongly availed is to be recovered under the provisions of Rule 14 of the CENVAT Credit Rules, 2004 along with interest and penalty. This act of taking CENVAT Credit by the appellant was never disclosed to the department and credit was recoverable from the appellant by invoking extended period under the Section 11A (5) of the Central Excise Act, 1944. Therefore, Show Cause Notice was issued and confirmed the demand vide the impugned order.

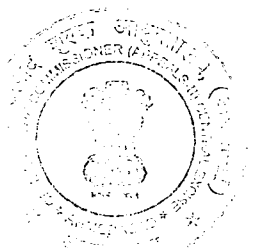
3. Being aggrieved by the impugned order the appellant has filed the present appeal on the following main grounds.

That in any organization, the machinery is the prime requirement for manufacturing of any product and each machine has its own characteristics as well its own functionality. Many of the machines look similar and are identifiable by putting identification mark in the form of label, sticker, metallic sticker, name plates etc. Therefore the CENVAT credit taken is very well available on the same.

They have cited CBEC Circular No.35/89-CX.8 dated 21.06.1990 wherein the Board has clarified the admissibility of Modvat Credit/CENVAT Credit on labels, stickers and nameplates in the affirmative. They have cited various case laws to support their case. (i) 1989 (39) ELT 169 (SC) of M/s. Jay Engineering Works It (ii) 1989 (43) ELT 201 (SC) of M/s. Eastend Paper (iii) 1994 (70) ELT 754.

In contention to invocation of extended period, they have submitted that there is no suppression of facts as it is settled law that non-disclosure of fact is not suppression when there is no legal requirement to tell. They contended that CENVAT Credit was taken by them on strength of valid documents prescribed under CCR 2004 and hence invocation of extended period is not valid and demand





is barred by limitation. Therefore, neither penalty can be imposed nor interest can be demanded.

4. Personal hearing was granted to the appellant 19-07-17, 21-08-17 and 12-09-17. However, no one appeared for hearing. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum and written submission made by the appellant. The main issue to be decided is whether CENVAT Credit availed on Metallic Stickers is admissible or otherwise.

5. A simple reading of definition of capital goods reveals that Metallic Sticker is neither goods falling under chapter 82,84,85, or Chapter 90, heading No.68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act; nor the Metallic Sticker is a pollution control equipment etc. moulds and dies or jigs and fixtures, refractories and refractory materials, tubes and pipes and fittings thereof or storage tank used in the factory of manufacturer of final products but does not include any equipment or appliance used in office or for providing output service and therefore, Metallic Sticker is not Capital goods as envisaged in CENVAT Credit Rule 2004. However, I find that the appellant has cited CBEC Circular No. 35/89-CX.8 dated 21.06.1990 and various case laws are considered in their defense. I find that said circular is squarely applicable to the facts of this case.

Subject : Admissibility of Modvat Credit on labels, stickers and nameplates-Regarding

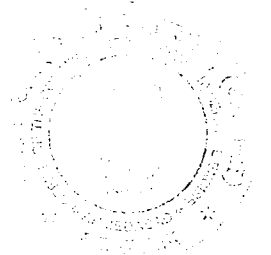
I am directed to say that doubts have been arisen whether labels, stickers and nameplates which are affixed to the final products, can be regarded as inputs for purposes of Modvat Credit.

The matter has been examined by the Board. It has been observed that the labels, stickers and nameplates are affixed to the final products in order to indicate the name of manufacturer, products name, Batch Number, Serial Number etc. which are essential requirements for marketability of the product. In many cases, the nameplate also contains operating instructions. The value labels, nameplates and stickers etc, is also included in the value of the product to which is affixed. The labels, stickers and nameplates are embedded to the final product and remain part and parcel of such products.

It has therefore been decided by the Board that labels, stickers and nameplates are inputs and Modvat Credit should be available on the same.

I also agree with the contention of the appellant that the Metallic Stickers are accessories of the machines and are admissible for Credit in view of the Board Circular. As it is the minor mistake of the appellant that he has availed the Credit as considering it as Capital goods Credit, it can be ignored as per the aforesaid Circular and accordingly, I find that, the appellant has correctly availed the CENVAT credit which was admissible to them. I also rely upon the citations i) 1989 (39) ELT 169 (SC) of M/s. Jay Engineering Works It (ii) 1989 (43) ELT 201 (SC) of M/s. Eastend Paper (iii) 1994 (70) ELT 754.



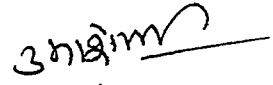


6. As the Credit is admissible to the appellant the question of penalty and interest is not sustainable hence, I set aside the impugned order.

7. In view of above discussion and findings, I quashed the impugned order and allow the appeal.

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

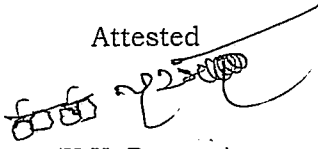
8 .The appeals filed by the appellant stand disposed off in above terms.



(उमा-शंकर)

आयुक्त (अपील्स)

Attested



(K.K. Parmar)

Superintendent (Appeals)
Central Tax, Ahmedabad.

BY SPEED POST A.D

To,

M/s. Cadila Healthcare Ltd.,

Survey No.417-419, 420,

Sarkhej-Bavla Road,

Village: Moraiya, Taluka Sanad,

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-IV, Ahmedabad-II
4. The Asst. Commissioner (Systems), Central Excise, Ahmedabad-II
5. Guard File
6. P.A File.

