



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)



O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,  
केंद्रीय उत्पाद शुल्क भवन, 7<sup>th</sup> Floor, Central Excise Building,  
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,  
आम्बावाडी, अहमदाबाद-380015, Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलीफैक्स : 079-26305136

रजिस्टर डाक ए.डी. द्वारा

1165/20169

क फाइल संख्या (File No.): V2(30) 5/EA-2/Ahd-II/Appeals-II / 2017-18  
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-304-16-17  
दिनांक (Date): 30.01.2018, जारी करने की तारीख (Date of issue): 20/2/2018  
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित  
Passed by Shri Uma Shanker, Commissioner (Appeals)

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. 30/Ref/IV/16-17 Dated: 01/03/2017  
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 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 धारा अंतर्गत 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।

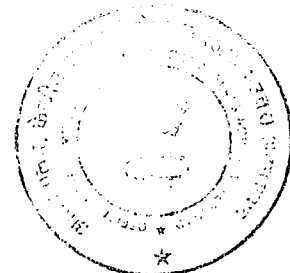
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 प्रक्रिया 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।

*C. file*



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 :-

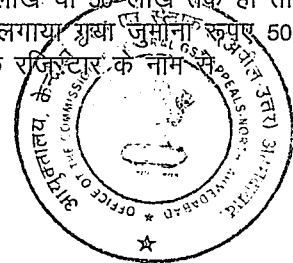
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 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 वहां 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 वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से भेजनी होगी।



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।

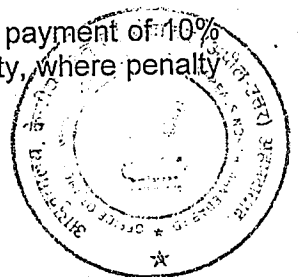
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

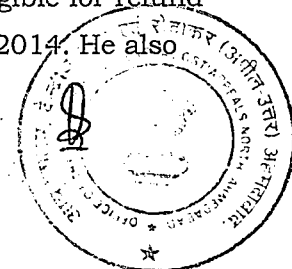
The subject appeal is filed by the department (hereinafter referred to as 'the appellant') against Order-in-Original NO.30/Ref/IV/16-17(hereinafter referred to as 'the impugned orders') passed by the Assistant Commissioner, Central Excise, Division-III, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority') in favour of M/s Cadila Pharmaceuticals Ltd., Survey No. 1389, Trasad Road, Taluka Dholka, Dist.Ahmedabad (hereinafter referred as 'the respondent assessee'), is engaged in the manufacture of excisable goods falling under Chapter Heading No. 30 of the First Schedule to the Central Excise Tariff Act, 1985.

2. Facts in brief of the case are that. During the relevant period i.e. December 1999 to April 2000 the assessee had availed CENVAT credit on laminated false Ceiling and panels and other items as 'Capital goods'. Alleging that credit on such capital goods was not admissible, two Show cause cum demand notices were issued to the appellants on 06.12.2004 & 07.12.2004 for recovery of the said credit along with interest and proposed penalty. On adjudication the demands were confirmed and penalties were imposed vide 010 No. 79 & 80/[C/2005/SR]. Aggrieved by the said order, the appellants filed appeal before Commissioner (Appeals) who allowed their appeal on the ground of limitation vide 01A No. 203—204/2005 (203-to-204-A11)/CE/DK/Commr(A). The Department filed appeal against the said order before CESTAT and the matter was remanded to the Ahmedabad (Fax appeal NO. 730 of 2007) & High Court held that CESTAT was not correct in holding that the demands were not barred by limitation. On the basis of the High court order, CESTAT, for the Central excise appeal NO—1619,1620 of 2009—SM vide its order 10361- 10362/2017 dated 30.01.17 held that the demands were barred by limitation.

3. Consequent upon the order of CESTAT, Ahmedabad, the applicant filed a refund claim on 13.02.2017, for Rs 10,41,230/- with interest which they had pre-deposited against the above said Order-in—Original. The refund sought by the assessee was deposited vide e—payment challan dated 07.08.2010 for Rs.10,41,230/— on the basis of stay order NO.S/6567657/WZB/AHD/2010 dated 21.06.2010 of Hon'ble CESTAT, Ahmedabad. The said refund claim was processed by the adjudicating authority and sanctioned the refund claim amounting to Rs.10,41,230/- to the respondent under Section 11B of the Central Excise Act, 1944. The Assistant Commissioner also sanctioned interest to the tune of Rs. 4,09,828/- under Section 35 FF of the Central Excise Act, 1944 to the assessee.

4. Being aggrieved with the impugned order the appellant has filed the instant appeal, on the following main grounds;

i. The adjudicating authority held that in the instant case, CESTAT vide its order 1036]—10362/2017 dated 30.01.2017 decided in favour of the applicant and allowed the appeal with consequential relief. Thus the applicant is eligible for refund of the pre—deposit as per the circular 984/ 8/ 2014~CX dated 16/9/2014. He also



found that as per the above circular, the applicant becomes eligible for refund whether the order of the appellate forum is proposed to be challenged by the Department or not.

ii. The adjudicating authority further found that the pre deposit amount of Rs 10,41,230/- has been paid by the applicant vide Treasury Challan dated 07.08.2010 made during appeal stage. Hence provisions of unjust enrichment do not apply in this case and in view of the Section 35FF of the Central Excise Act, 1944, that if the pre deposit is required to be refunded consequent upon the order of the appellate authority, there shall be interest to be paid, For the rate of interest as per Notification No. 24 / 2014— CE. (N.T.) dated 12/08/2014 the Central Government fixed the rate of interest at six percent per annum .He also found that the CSTAT has held that the demands have been barred by limitation and the impugned order is set aside and the appeals are allowed with consequential relief and accordingly sanctioned the refund of pre deposit of Rs.10,41,230/- and paid interest to the tune of Rs.4,09,828/- to the assessee.

iii. The adjudicating authority has erred in passing the order of interest under section 35FF as he failed to differentiate the provisions of Section 35FF of the Central Excise Act, 1944 before and after the amendment dated 06.08.2014 which is produced below:-

Section 35FF before the amendment i.e.before 06.08.2014.Section 35FF: " Interest on delayed refund of amount deposited under the proviso to section 35 F -

Section 35F — Where an amount deposited ..... there shall be paid to the appellant interest at the rate, prescribed in Section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount".

Section 35FF after the amendment w.e.f. 06.08.2014.Section 35FF " Interest on delayed refund of amount deposited under Section 35 F -

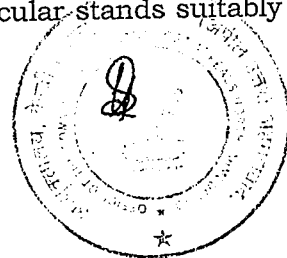
Where an amount deposited ..... prior to the commencement of the Finance (No.2) Act,2014, shall continue to be governed by the provisions of Section 35FF as it stood before the commencement of the said Act".

iv. Further the Adjudicating authority has ignored the para 1.2 of Board's Circular No.984/08/2014-CX dated 08.09.2014 issued from F.NO.390/Budget/1/2012—JC which states that —

"The amended provisions apply to appeals filed after 6th August, 2014. Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 contain specific saving clause to state that all pending appeals/stay applications filed till the enactment of the Finance Bill shall be governed by the erstwhile provisions"

v. He further ignored the para 4 of Board's Circular No.993/17/2014CX dated 05.01.2015 states that —

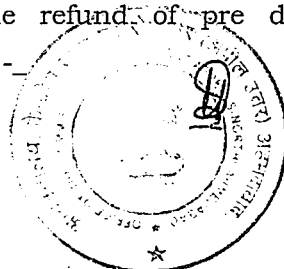
"Para 1.2 of the Circular *ibid* stated that amended provisions would apply to appeals filed after 6th of August, 2014. ....Para 1.2 of the earlier Circular stands suitably modified."



vi. In the instant case, the pre-deposit of Rs.10,41,230/- was made on 07.08.2010 by the assessee being pre-deposit of 50% of the total duty involved on the basis of CESTAT order No.8/656-657/WZB/AHD/2010 dated 21.06.2010 passed by the Hon'ble CESTAT, Ahmedabad much before the amendment of section 35 FF, vide the Finance (No.2) Act, 2014 dated 06.08.2014. The final order of CESTAT was passed vide order No.A/10361—10362/2017 dated 30.01.2017 wherein the Hon'ble CESTAT set aside the order-in-original confirming the demand. Therefore, as per date of receipt of CESTAT order, no interest is payable to the assessee and the aforesaid order-in-original passed is not legal and requires to be quashed and set aside.

5. Personal hearing in this case was granted on 01-11-17, 01-12-17 and 20.12.2017; nobody appeared on behalf of the appellant. They have filed submissions in their cross objection on dated 19-12-17. I have carefully gone through the case records, facts of the case, GOA, and submission made by the respondent. I find that, consequent upon the stay order of Hon'ble CESTAT, Ahmedabad, the applicant filed a refund claim on 13.02.2017, for Rs 10,41,230/- with interest which they had pre-deposited against the above said Order-in—Original. The refund sought by the assessee was deposited vide e—payment challan dated 07.08.2010 for Rs.10,41,230/- on the basis of stay order NO.S/6567657/WZB/AHD/2010 dated 21.06.2010 of Hon'ble CESTAT, Ahmedabad. The Assistant Commissioner, Central Excise, Div-III, Ahmedabad-II sanctioned the refund claim under Section 11B of the Central Excise Act, 1944. He also sanctioned interest to the tune of Rs. 4,09,828/- under Section 35 FF of the Central Excise Act, 1944 to the assessee.

6. I find that, the adjudicating authority held that, Hon'ble CESTAT vide its order 1036]—10362/2017 dated 30.01.2017 decided in favour of the applicant and allowed the appeal with consequential relief. Thus the applicant is eligible for refund of the pre—deposit as per the circular 984/ 8/ 2014~CX dated 16/9/2014. He also found that as per the above circular, the applicant becomes eligible for refund whether the order of the appellate forum is proposed to be challenged by the Department or not. The adjudicating authority further found that the pre-deposit amount of Rs 10,41,230 has been paid by the applicant vide Treasury Challan dated 07.08.2010 at Bank of Baroda, Rajaji Salai, Chennai, which is sought by them as refund. is a pre-deposit made during appeal stage. Hence provisions of unjust enrichment do not apply in this case and in view of the Section 35FF of the Central Excise Act, 1944, that if the pre deposit is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest. For the rate of interest he relied upon Notification No. 24 / 2014— CE. (N.T.) dated 12/08/2014 wherein in terms of section 35FF of the Central Excise Act, 1944. (1 of 1944), the Central Government fixed the rate of interest at six percent per annum for the purpose of the said Section. He also found that the Hon'ble CESTAT has held that the demands have been barred by limitation and the impugned order is set aside and the appeals are allowed with consequential relief and accordingly sanctioned the refund of pre deposit of Rs.10,41,230/- and interest to the tune of Rs.4,09,828/-



7. I find that, The adjudicating authority has erred in passing the order of interest under section 35FF as he has failed to differentiate the provisions of Section 35FF of the Central Excise Act, 1944 before and after the amendment dated 06.08.2014 which is produced below:-

Section 35FF before the amendment i.e.before 06.08.2014.Section 35FF: " Interest on delayed refund of amount deposited under the proviso to section 35 F -

Section 35F — Where an amount deposited ..... there shall be paid to the appellant interest at the rate, prescribed in Section 11BB **after the expiry of three months from the date of communication of the order** of the appellate authority, till the date of refund of such amount".

Section 35FF after the amendment w.e.f. 06.08.2014.Section 35FF " Interest on delayed refund of amount deposited under Section 35 F -

Where an amount deposited ..... prior to the commencement of the Finance (No.2) Act,2014, shall continue to be governed by the provisions of Section 35FF as it stood before the commencement of the said Act".

From the above, it is clear that in the amended section 35FF there is saving clause that the amount deposited under Section 35F, prior to the commencement of the Finance (No.2) Act,2014, shall continue to be governed by the provisions of Section 35FF as it stood before the commencement of the said Act".

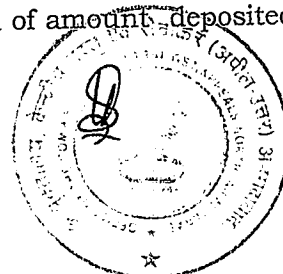
8. I also find that, the Adjudicating authority has ignored the para 1.2 of Board's Circular No.984/08/2014-CX dated 08.09.2014 which states that;

"The amended provisions apply to appeals filed after 6th August, 2014. Section 35F of the Central Excise Act, 1944 and Section 1295 of the Customs Act, 1962 contain specific saving clause to state that all pending appeals/stay applications filed till the enactment of the Finance Bill shall be governed by the erstwhile provisions"

9. He has further ignored the para 4 of Board's Circular No.993/17/2014CX dated 05.01.2015 states that —

"Para 1.2 of the Circular ibid stated that amended provisions would apply to appeals filed after 6th of August, 2014. An Act of Parliament comes in to effect on the date it received the assent of the President of India. Hence, the amended provisions regarding filing of appeal along with stipulated percentage of pre-deposit shall apply to all appeals filed on or after 6th August, 2014. Para 1.2 of the earlier Circular stands suitably modified."

11. In the instant case, I find that the pre-deposit of Rs.10,41,230/- was made on 07.08.2010 by the assessee being pre-deposit of 50% of the total duty involved on the basis of Hon'ble CESTAT order No.8/656-657/WZB/AHD/2010 dated 21.06.2010, much before the amendment of section 35 FF, vide the Finance (No.2) Act, 2014 dated 06.08.2014. The final order of CESTAT was passed vide No.A/10361—10362/2017 dated 30.01.2017 wherein the Hon'ble CESTAT set aside the order-in-original confirming the demand. Therefore, as per Section 35FF before the amendment i.e.before 06.08.2014.Section 35FF: " Interest on delayed refund of amount deposited under the proviso to section 35 F -



Section 35F — Where an amount deposited ..... there shall be **paid to the appellant interest at the rate, prescribed in Section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount**".

In view of above, I hold that no interest is to be paid to the respondent. I find the impugned order is neither legal nor proper as it is based on an erroneous approach and misinterpretation of the relevant statutory provisions and requires to be set aside to the extent of matter related to interest only as mentioned in para 15 and 16 of the appeal filed by the department .

12. In view of above discussion and findings, I partially set aside the impugned order as discussed above and allow the appeal filed by the department to the extent discussed above.

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

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

Attested



(K.K.Parmar)

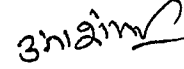
Superintendent (Appeals)  
Central tax, Ahmedabad.

By Regd. Post A. D

M/S. Cadila Pharmaceuticals Ltd.,  
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Copy to-

1. The Chief Commissioner, CGST Central Excise, Ahmedabad zone.
2. The Commissioner, CGST Central Excise, Ahmedabad- North.
3. The Asstt. Commissioner, CGST C.Ex. Div-Dholka, Ahmedabad- North.
4. The Asstt.Commissioner (Systems), CGST C.Ex. Ahmedabad-North.
5. Guard file.
6. PA File.



(उमा शंकर)

आयुक्त (अपील्स )

Date- /01/18

