

|  |                                  |  |
|--|----------------------------------|--|
|  | <b>केंद्रीय कर आयुक्त (अपील)</b> |  |
| O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,                                     | केंद्रीय उत्पाद शुल्क भवन        | 7 <sup>th</sup> Floor, Central Excise Building,                                    |
| साल्मभव जयते   | सतलवी मंजिल, पोलिटिकनिक के पास   | Near Polytechnic,  |
| आम्बावाडी, अहमदाबाद-380015   | Ambavadi, Ahmedabad-380015       |  |
| ☎ 079-26305065   |                                  | ☎ 079-26305136   |

रजिस्टर डाक ए .डी .द्वारा

2088-10,  
2092

क फाइल संख्या (File No.): V2(30)78 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-369-17-18

दिनांक (Date): 23-Mar-2018 जारी करने की तारीख (Date of issue): 5/4/2018

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-V), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित

Arising out of Order-In-Original No 09-15/ADC/2017/RMG Dated: 28/11/2017

issued by: Additional Commissioner Central Excise (Div-V), Ahmedabad North

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:**

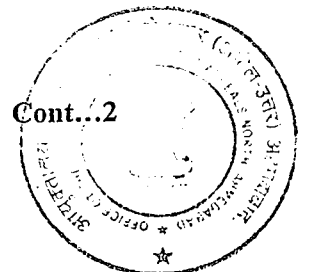
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

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 हैं।



- (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 हों।

- (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 :-

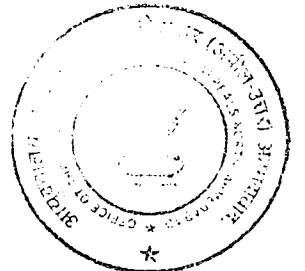
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 मैन्टल 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 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



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।

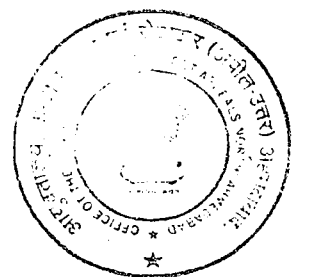
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 appeals is filed by M/s. Cadila Pharmaceuticals Ltd. S.no.1389,Trasad Road, Dholka, Dist: Ahmedabad(hereinafter referred to as '*the appellant*')against Order in Original No.09-15/ADC/2017/RMG (hereinafter referred to as '*the impugned orders*') passed by the Additional Commissioner, CGSTCentral Excise, Ahmedabad-North (hereinafter referred to as '*the adjudicating authority*'). The appellant is engaged in the manufacture of Pharmaceutical Products falling under Chapter 30 of the Central Excise Tariff Act, 1985[hereinafter referred as CETA-1985] they are also availing the benefit of CENVAT credit under Cenvat Credit Rules,2004.

2. The facts in brief of the case are, during the course of audit it was revealed that the appellant had availed the CENVAT credit of service tax paid under 'Clearing & Forwarding services' on the basis of 'debit notes' which cannot be considered as valid documents under Rule 9(1) and 9(2) of the Cenvat Credit Rules, 2004. Thus, CENVAT credit so availed is not admissible. Seven Show Cause Notices were issued for the period from Nov-2009 to March. 2015 total demand of Rs.89.93.397/- on the basis of observations of audit made in procedural para-1 of the Audit Report No. 215/2010-11. Vide above orders the adjudicating authority has disallowed Rs.1754546/-credit availed without documents and Rs. 336091/- credit not pertains to C&F service.

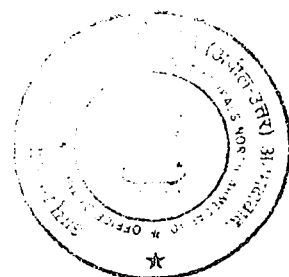
3. Being aggrieved with the impugned orders the appellant filed the instant appeal, on the following main grounds;

i. That we have taken the Service tax credit on services provided by the C & S Agent for which they raised the Debit Note along with Service Tax. We have account for such debit Notes in Head Office and then transfer such C & S agent credit to Dholka Unit by way of issue of ISD Invoice. On the base of ISO invoice, Dholka Mfg. Unit has taken the service tax credit. Original debit notes were not available at Bhat office at the time of audit as it was lying at various location of C & S Agent at all over the country.

ii. We have request the audit that we will furnish the same but it would takes two. to three months times but audit was not agree with us and asked us to Debit the amount of Rs 15,75,074/- along with interest for which Debit Notes were not available at that time. Accordingly, we have debited of Rs 15,75,074/- in CENVAT Accounts dtd.14.02.2011. Copy of the Audit Report No 215/2010-11 is enclosed here with for your ready reference in which the amount was debited shown by the audit in audit report.

iii. The service tax credit taken on debit note raised by the C & S agent has been originally disputed by the audit vide Audit Report No 282/2009-10. For subsequent period also the same audit point has been raised by the audit under their Audit Report No 215/2010-11 for which we have taken Service Tax credit on debit notes on C & S

*[Handwritten signature]*



Agent services provided by C & S Agent. The Department issued the Show Cases Notices as per Table-"A" of O.I.O. No<sup>#</sup>09- 15/ADC/2017 dtd. 28.11.2015. The amount adjusted against the Audit Report No 215/2010-11 as the same service was disputed by the audit for subsequent period. therefore, requested to allow the same amount of Rs. 15,75,074/- as debited in CENVAT Account as per audit report No 215/2010-11.

iv. As regards for amount of Rs. 36,39,837/- for the period from Nov,2009 to Sept,2010, that while furnish the details to Range office, they have submitted other services by mistake of Rs. 3,36,091 /- not pertaining to C & S agent service. Therefore, the credit was availed other than C & S agent service which was eligible as per CENVAT Credit Rules,2004 and credit taken was not disputed by the department but only dispute raised that Debit Notes not furnish by them on which credit was taken on original invoices during the material period of time. Therefore, such credit would be admissible and allowable without furnishing the Debit Notes.

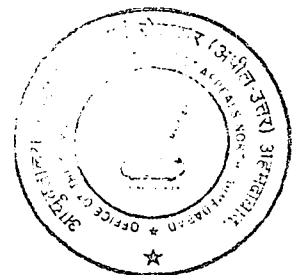
v. As regards to Sr. No 07 of Table-B of the OIO No 09-15/2017, SCN No V 15-67/OA/2015 dtd 11.08.2015 for amount of RS 7,92,004/- for the period from July,2014 to March,2015, that they submit the Original Debit Note of Rs 18,131 /- for ready reference.

vi. As regards penalty imposed, the issue related to verification of records, the required details are available in the debit notes. No penalty is justified.

4. Personal hearing in the matter was held on 12.02.2018, wherein Shri S.J. Vyas, Advocate, appeared on behalf of the appellant and reiterated the submissions made in their grounds of appeal. He submitted additional written submission on dtd. 15-2-18 and 21-2-18. I have carefully gone through the records of the case, OIO, GOA, as well as the written submissions made by the appellant. I find that the issue to be decided is whether impugned orders is correct or not.

5. I find that, the adjudicating authority, on the directions of the Commissioner (A), vide order dtd.29.05.2017, taken up the seven SCNs for adjudication with the limited scope to verify whether the debit notes contain the information required to be mentioned as stipulated In Rule 9(2) of the CCR,2004 and allow the credit accordingly. The appellant has submitted the original debit notes for the entire period from November,2009 to March, 2015. They also Informed that in terms of Audit Report No.215/2010-11, they have debited the differential service tax amount of Rs 15,75,074/- along with interest of Rs.1,65,014/-as the debit notes were not available at the time of audit. The total Service Tax amount of Rs.15,75,074/- paid. However while "comparing the data mentioned in the Annexure with the debit notes submitted by the appellant, it was noticed that the appellant has not submitted the entire debit





debit notes produced. i find that, The appellant has contended that in respect of demand of credit Rs.36,39,837/- for Rs.19,04,172/~ debit notes are submitted ,and the credit of Rs.3,36,091/- taken does not pertain to C&F services. Further, the Service Tax payment of Rs.1575074/-which they claimed, was made against the Audit Report NO215/2010-11-. I have gone through the Auditpara and find that the issue in the present case is covered in the procedural para-1 of the said audit report. wherein audit had noticed that as per final Audit Report No: 282/2009-10 among other issues mentioned therein, periodical SCNs are issued to the assessee for wrong avaiiment of service tax credit on C&F Agent Service. The seven SCNs under considerations are the outcome of this procedural para. In light of above, I find that the matter is fit to remand back to the adjudication authority for proper verification of said audit objection and submission/cenvat record of the appellant to decide the availment of credit to the appellant.

6. In view of the foregoing discussion and findings, the matter is remanded back to the adjudication authority for proper verification of audit/cenvat record and taking fresh decision in the matter.

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

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

*(Handwritten signature)*

(उमा शंकर)  
आयुक्त (अपील्स )

Attested

*(Handwritten signature)*

[K.K.Parmar )  
Superintendent (Appeals)  
Central tax, Ahmedabad.

Date- /3/18

By Regd. Post A. D

M/s. Cadila Pharmaceuticals Ltd.,  
Survey no.1389,  
Trasad Road,  
Ta-Dholka, Dist- Ahmedabad

Copy to :

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

✓

