

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

रजिस्टर डाक ए .डी .द्वारा

24/1/18
24/15

क फाइल संख्या (File No.): V2(STC)14/EA-2/North/Appeals/ 2017-18
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 400-16-17
 दिनांक (Date): 27.03.2018, जारी करने की तारीख (Date of issue): 16/4/2018
 श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
 Passed by Shri Uma Shanker, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV(AR-V)), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित
 Arising out of Order-In-Original No. 02-07/Supdt/FB/2017-18 Dated: 11/09/2017
 issued by: Superintendent Commissioner., Central Excise (Div-IV(AR-V)), Ahmedabad-

II

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

M/s Dishman Pharmaceuticals & Chemicals Ltd (100% EOU)

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 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) 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 मैन्टल 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 वहाँ 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 वहाँ 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 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 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.02-07/SUPDT./FB/2017-18 (hereinafter referred to as 'the impugned orders') passed by the Superintendent,CGSTC.EX.AR-V,Division-IV,Ahmedabad-north (hereinafter referred to as 'the adjudicating authority') in favour of M/s. Dishman Pharmaceuticals & chemicals Ltd. (100%EOU) (Now,M/s. Dishmancarbogen amics ltd.)S.No.47,PlotNo.1,Vill-Lodariyal,Ta-Sanand,Dist.Ahmedabad (hereinafter referred as 'the respondent'), is engaged in the manufacture of excisable goods falling under Ch. No. 29 of the First Schedule to the Central Excise Tariff Act, 1985.

2. Facts in brief of the case are that, during the course of audit it was observed that respondent had wrongly availed service tax credit on courier services as 'Input Service'. As the courier service was not covered under the definition of 'Input Service, under Rule 2(l) of the CENVAT Credit Rules 2004.the respondent have availed CENVAT credit and contravened the provisions of the Rule 3 of CENVAT Credit Rules, 2004 ,with an intent to evade the payment of duty, during the period from April-2011 to feb-2016. Therefore, 6 Show Cause Notices were issued for recovery of wrongly availed cenvat credit under Rule 14 of CENVAT Credit Rules, 2004, with interest and penalty. Said SCNs were adjudicated vide above orders, wherein dropped the proceedings.

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

a. That, the Cenvat Credit on Courier services availed in the present cases were neither related to export of goods nor in respect of the goods removed from the factory premises i.e. post manufacturing activities/expenses. Thus, such services did not qualify as 'input service' as defined in Rule 2(I)(ii) of CENVAT Credit Rules, 2004.

b. CENVAT credit availed on ' Courier Service' did not admissible as the services availed beyond the factory gate is inadmissible.

c. as per the provisions of Rule 9 (6) of the CENVAT Credit Rules, 2004 the burden of proof regarding admissibility of CENVAT Credit shall lie upon the manufacturer or provider of output service taking such credit.

d. they had suppressed the material facts regarding taking of CENVAT credit of on services availed beyond the factory gate by not indicating the same in their monthly returns. They are liable to penalty under Rule 15(2) of the CENVAT Credit Rules, 2004

e. the defination of input services as per Rule 2(1) of Cenvat Credit Rules, as stood after amendment vide Notification NO. 3/2011—CE(N.T.) dated 01.03.2011,That after 01.03.2011, Cenvat Credit of Courier services used for placing orders, filing quotation for procurement, marketing dispatch instructions,etc. is neither falling under main part nor these are inclusive part of the definition of input services. Further, these services are used in relation to business which has been kept out of purview of the Input services under rules 2(1) of Cenvat Credit Rules 2004 w.e.f. 01.03.2011.

f. That, since the above services on which Cenvat Credit availed by the assessee, has no relation either directly or indirectly in relation to the manufacturing activity, the adjudicating authority has erred in allowing the Credit of said services. Deptt. rely on The hon'ble Supreme Court judgment in the case of Maruti Suzuki Ltd., reported in 2009(240)ELT 641(SC)

g. Therefore, the criteria set down by the Hon'ble Supreme Court for availing input/ input services is not fulfilled in the present case.

h. In the said order though the adjudicating authority comparing New Definition vis-a-vis Old Definition he has observed that the new definition of input service remains same as earlier; however, it has deleted the terms 'setting up of factory'; 'activities relating to business'. The adjudicating authority held as activity relating to business of manufacturing activity is not tenable.

i. Further, the order of Hon'ble High Court of Gujarat in the case of Apar Industries Ltd has been accepted by the Department on the ground of monetary limitations and not on merit.

The respondent also filed cross objections as under:

a. That such service Cenvat Credit is available to them. Since the said services has relation either directly or indirectly in or relation to the manufacturing activity, and covered under the definition of input service under rules 2(1) of Cenvat Credit Rules 2004.

b. That Cenvat Credit of Courier services used for placing orders, filing quotation for procurement, marketing dispatch instructions, sending stock transfer documents etc. is falling under inclusive part of the definition of input services.

c. They relied on the following decisions;

i. MMS Maritime (india) Pvt.Ltd.2016(41)STR 869 (Tri-Mum),

ii. OIANO.AHM-EXCUS-002-APP-70-71/17-18dt..22-9-17.ofTheComm'r(Appeals)

Ahmedabad.

iii. HON'BLE CESTAT Order NO.A/1194-1195/WZB/AHD/2010 dt.12-8-10. in their own case.

4. Personal hearing in this case was granted on 12.2.2018, Shri Vikash Agarwal CA, appeared on behalf of the respondent. He has made submissions during P.H. that courier used for sending documents. That earlier OIA is in their favour in identical matter. They filed written submission on dated 13-2-18. I have carefully gone through the case records, facts of the case, GOA, and submission made by the respondent. I find that during the course of audit it was observed that the respondent had wrongly availed service tax credit on courier service as 'Input Service'. not covered under the definition of 'Input Service' under the Rule 2(1) of the CENVAT Credit Rules 2004. and contravened the provisions of the Rule 3 of CENVAT Credit Rules, 2004, with an intent to evade payment of duty. They are availing CENVAT credit on services for the period from April 2011 to feb-2016. Therefore, 6 Show Cause Notices were issued for recovery of cenvat credit from them under Rule 14 of CENVAT Credit Rules, 2004, with interest and penalty. Said SCNs were adjudicated vide above order, wherein dropped the proceedings in respect of all the Show Cause Notices.



present case were related to documents, Courier services used for placing orders, filing quotation for procurement as well as marketing dispatch instructions, issuing cheque for procurement, sending stock transfer documents and also for receiving dispatch instructions from the marketing or the Head Office is falling under main part/inclusive part of the definition of input services. Such services are qualified as 'input service' as defined in Rule 2(I) of CENVAT Credit Rules, 2004. Therefore, CENVAT credit availed on Courier Service is admissible to the appellant.

6. Further, the definition of input services as per Rule 2(1) of Cenvat Credit Rules, as stood after amendments vide Notification NO. 3/2011—CE(N.T.) dated 01.03.2011, I find that said services have relation either directly or indirectly, to the manufacturing activity, such services are qualified as 'input service' as defined in Rule 2(I) of CENVAT Credit Rules, 2004. Therefore, CENVAT credit availed on ' Courier Service' is admissible to the appellant.

7. In view of above discussion and findings, I uphold the impugned orders and reject the appeal filed by the department.

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

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Attested



(K.K.Parmar)

Superintendent (Appeals)
Central tax, Ahmedabad.

Date- /03/18

By Regd. Post A. D

M/s.Dishman Pharmaceuticals Ltd. (100%EOU)

- (Now, M/s. Dishman Carbogen Amics Ltd.)

S.No.47, Plot No.1,

Vill-Lodariyal, Ta-Sanand,

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 C.Ex. Div-IV,,Ahmedabad- North.
4. The Asstt.Commissioner (Systems), CGST C.Ex. Ahmedabad-North.
5. ✓ Guard file.
6. PA File.