

केंद्रीय कर आयुक्त (अपील)

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

टेलिफोन 079-26305065 टेलिफैक्स 079-26305136

रजिस्टर डाक ए.डी.द्वारा

849
853

- क फाइल संख्या (File No.): V2(30)92/Ahd-II/Appeals-II/2016-17
 स्थगन आवेदन संख्या(Stay App. No.):
- ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-60-17-18
 दिनांक (Date): 8/28/2017 जारी करने की तारीख (Date of issue): 20/9/17
 श्री उमा शंकर, आयुक्त(अपील-II) 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. 19/Refund/16-17 Dated: 11/10/16 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 Swiss Parenteral 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 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 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 :-

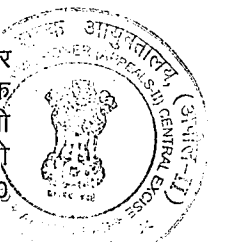
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 मैटल 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 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 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

M/s. Swiss Parenteral Pvt. Ltd., 709, Karala Industrial Estate, Nr. Bavla, Dist. Ahmedabad, (*hereinafter referred to as 'appellant'*) holding Service Tax Registration No. AACCS6860PXM001, engaged in the manufacture of P.P. Medicines falling under Chapter 30 of the Central Excise Tariff Act, 1985, have filed the present appeal on 05.12.2016, against the Order-in-Original Number 19/REFUND/16-17 dated 09.11.2016 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central Excise, Division-III, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellant are engaged in the manufacture of dutiable as well as exempted medicaments, falling under Chapter 30 of the Schedule to the Central Excise Tariff Act, 1985, by availing credit of duty paid on inputs in terms of Cenvat Credit Rules, 2004, but did not maintain separate inventory of inputs used in the manufacture of exempted and dutiable medicaments. Rule 57 AD of the Central Excise Rules, 2004, stated that –

" Obligation of manufacturer of dutiable and exempted goods.- (1)
CENVAT credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods, except in the circumstances mentioned in sub-rule (2).

(2)Where a manufacturer avails of CENVAT credit in respect of any inputs, except inputs intended to be used as fuel, and manufactures such final products which are chargeable to duty as well as exempted goods, then, the manufacturer shall maintain separate accounts for receipt, consumption and inventory of inputs meant for use in the manufacture of dutiable final products and the quantity of inputs meant for use in the manufacture of exempted goods and take CENVAT credit only on that quantity of inputs which is intended for use in the manufacture of dutiable goods. The manufacturer, opting not to maintain separate accounts shall follow either of the following conditions, as applicable to him, namely:-

(a) if the exempted goods are,-

(i) final products falling under Chapters 50 to 63 of the Schedule to the Central Excise Tariff Act, 1985 ;

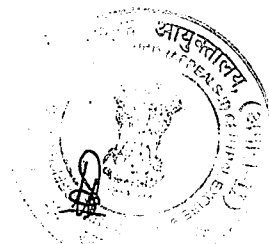
(ii) tyres of a kind used on animal drawn vehicles or handcarts and their tubes, falling within Chapter 40;

(iii) black and white television sets, falling within Chapter 85;

(iv) newsprint, in rolls or sheets, falling within Chapter heading No.48.01, the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to inputs used in or in relation to the manufacture of such final products at the time of their clearance from the factory, or

(b) if the exempted goods are other than those described in clause (a) above, the manufacturer shall pay an amount equal to eight per cent. of the total price, excluding sales tax and other taxes, if any, paid on such goods, of the exempted final product charged by the manufacturer for the sale of such goods at the time of their clearance from the factory."

The appellant being a manufacturer of exempted and dutiable goods, and not maintaining separate accounts for both such goods, was required to pay



an amount equal to eight percent of the total sale price of such exempted goods. In this context, Rule 57CC of the Central Excise Rules, 1944, stated that -

" Adjustment of credit on inputs used in exempted final products or maintenance of separate inventory and accounts of inputs by the manufacturer.- (1) Where a manufacturer is engaged in the manufacture of any final product which is chargeable to duty as well as in any other [final product which is exempt from the whole of the duty of excise leviable there on or is chargeable to nil rate of duty] and the manufacturer takes credit of the specified duty on any inputs (other than inputs used as fuel) which is used or ordinarily used in or in relation to the manufacture of both the aforesaid categories of final products, whether directly or indirectly and whether contained in the said final products or not, the manufacturer shall, unless the provisions of sub-rule (9) are complied with, pay an amount equal to eight per cent of the price (excluding sales tax and other taxes, if any, payable on such goods) of the second category of final products charged by the manufacturer for the sale of such goods at the time of their clearance from the factory.

(2) The amount mentioned in sub-rule (1) shall be paid by the manufacturer by adjustment in the credit account maintained under sub-rule (7) of rule 57G or in the accounts maintained under rule 9 or sub-rule (1) of rule 173G and if such adjustment is not possible for any reason, the amount shall be paid in cash by the manufacturer availing of credit under rule 57A.

Thus, the Joint Commissioner, Central Excise, Ahmedabad-II, issued show cause notice dated 26.09.2005, to the appellant proposing imposition of penalty, interest and recovery of an amount of Rs.10,41,840/-, @ 8% of the price of exempted medicaments cleared during the period 2000-01 to 2003-04, as per the provisions of Rule 57CC of the Central Excise Rules, 1944, Rule 6 of the Cenvat Credit Rules, 2001/2002.

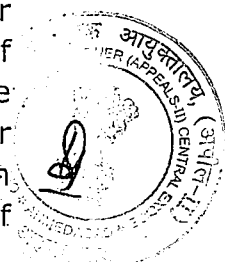
3. Also, another Show Cause Notice dated 01.12.2005, was issued to the appellant on the same grounds for the period from November, 2000 to March, 2005, for recovery of an amount of Rs.87,96,155/-, by the Commissioner, Central Excise, Ahmedabad-II. Both the said Show Cause Notices dated 26.09.2005 and 01.12.2005, were adjudicated by the Commissioner, Central Excise, Ahmedabad-II, vide Order-In-Original No. 43-44/Commr./2006 dated 20.10.2006, confirming demand of Rs.88,41,543/-, along with interest and imposing penalty of equivalent amount. Aggrieved by the said OIO dt. 20.10.2006, the appellant filed an appeal with the CESTAT.

4. Meanwhile, vide Section 70 to 73 of the Finance Act, 2010, provisions of Rule 57 AD of the Central Excise Rules, 1944, and Rule 6 of the Cenvat Credit Rules, 2001/2002/2004, were amended retrospectively to enable manufacturers to pay an amount equivalent to the Cenvat Credit attributable to the inputs used in or in relation to the manufacture of exempted goods before or after the clearance of such goods, where a dispute relating to adjustment of credit of inputs used in or in relation to exempted final products relating to the period from 01.04.2000 to 31.03.2008, was pending on the date on which the Finance Bill, 2010 received the assent of the President i.e. 08.05.2010. As per the said Section 70 to 73, the appellant

had to pay the amount in accordance with the amended provisions, alongwith interest, and make an application to the jurisdictional Commissioner alongwith supportive documentary evidence and a certificate from the CA or a Cost Accountant certifying the amount payable within six months from the date on which the Finance bill receives the assent of the President. The Commissioner on receipt of the application had to verify the correctness of the amount paid within a period of two months from the date of receipt of the application and in case the amount so paid was found to be less than the amount payable, he had to call the appellant to pay the differential amount along with interest, which shall be paid within a period of ten days from the receipt of the communication from the Commissioner in this regard.

5. The appellant accordingly filed an application with the Commissioner to avail this facility on 29.10.2010, stating that they had reversed Cenvat credit amount of Rs.7,85,573/-, and that they were in the process of calculating the interest. The Commissioner, Central Excise, Ahmedabad-II, vide his Order No. Section 68 to 72/F.A./COMMISSIONER/ 03/2010 dated 28.12.2010, after verifying the correctness of the amount payable i.e. Rs.60,32,345/-, called the applicant to pay the differential amount, along with interest @ 24% p.a., within ten days of the receipt of the communication. Aggrieved by the Commissioner's Communication dated 28.10.2010, in this matter, the appellant filed an appeal with the CESTAT. The CESTAT combined the appeals filed by the Appellant and the Department against Order-In-Original No. 43-44/COMMR/2006 dtd.31.10.2006, and the appeals filed by the Appellant and the Department against Order No. Section 68 to 72/F.A./COMMISSIONER/ 03/2010 dated 28.12.2010. The issue to be decided by the CESTAT were (i) whether subsequent Show Cause Notice dated 01.12.2005, issued by the Department covering the period from November 2000 to 31.03.2005, is maintainable when an earlier Show Cause Notice dated 26.09.2005, on the same grounds covering the period from 2000-01 to 31.03.2004, had been issued by the Department, but not adjudicated (ii) whether subsequent reversal of credit attributable to inputs used in the manufacture of exempted final products with interest is sufficient to discharge the demand of amount @ 8% or 10% of the sale price of the exempted goods if the appellant fails to maintain separate inventory of inputs for manufacture of dutiable and exempted goods and (iii) Whether the Appeal No. E/444/2011 filed by the Revenue and Appeal No. E/449/2011, filed by the appellant, against Order No. Section 68 to 72/F.A./COMMISSIONER/ 03/2010 dated 28.12.2010, passed by the Commissioner of Central Excise, Ahmedabad-II, are maintainable when the appellant had not complied with the same.

6. On the first issue, the CESTAT held that the second Show Cause Notice dt.26.09.2005, on the same grounds invoking extended period of time limitation could not be issued by the Revenue. On the second issue the Tribunal held that the method adopted by the adjudicating authority for working out the demand of Rs.88,41,543/-, on the basis of 8% or 10% of the sale price of dutiable and exempted final products, is not maintainable and hence remanded the matter back to the adjudicating authority for proper verification of the appellants claim of reversal of Cenvat credit on inputs attributable to manufacture of exempted final products on the basis of



appellant's records after according opportunity to the appellant to explain their case before deciding the issue of quantum of Cenvat credit in remand proceedings. On the third issue, the CESTAT stated that after considering the submission made by the appellant, the appropriate authority quantified and demanded an amount. The Appellant did not comply with the provisions of sub-section (3) of Section 70 to 73 of the Finance Act, 2010, as the differential amount of Rs. 60,32,345/-, decided by the appropriate authority was not paid within ten days of receipt of the Order dt. 28.12.2010. In the circumstances, the Order dt. 28.12.2010, does not exist after the specified time in the relevant Sections of Finance Act, 2010. That being a one time scheme, it had to be either accepted or rejected by the concerned parties. Besides, the Order dt. 28.12.2010, was not an appealable order and for these reasons, the Tribunal had no jurisdiction to entertain any appeal against the said order.

7. On the basis of CESTAT's final Order No. A/11106-11108/2014 dtd.19.06.2014, the claimant had filed a refund claim of Rs. 7,95,913/-, on 28.08.2014. The appellant on their own worked out the amount attributable to exempted products to Rs.7,85,573/-, and interest on such amount to Rs.7,38,439/-. Since, the amount pre-deposited as per the appellants statement was 23,19,954/-, the excess amount of pre-deposit after deduction of Rs. 15,24,012/- {7,85,573/- + 7,38,439/-}, the amount claimed as refund by the appellant was Rs.7,95,913/-. As there are no confirmed dues against the appellant and the matter is under remand proceedings, the appellant filed their refund claim for the proportionate pre-deposit amount. The Adjudicating Authority found that the appellants matter has been remanded back by the CESTAT and same has not been finalized. The disagreement between the department and the claimant regarding the amount of reversal of credit has not been settled and therefore, the liability of the claimant has not attained finality and hence the claimant on its own cannot arrive at the amount of duty required to be paid by them. Besides, in the absence of any clear directions of the CESTAT to refund the duty, no claim arises. The Adjudicating Authority found the refund claim filed by the claimant to be premature and accordingly rejected the appellant's refund claim of Rs. 7,95,913/-, vide OIO No. 19/REFUND/16-17 dt.09.11.2016.

8. Aggrieved by the said OIO dt.10.11.2016, the appellant filed this appeal on 05.12.2016. The appellant appeals on the ground that as on date of the Refund Claim, no confirmed demand was pending against them and as such the pre-deposited amounts were required to be refunded. They relied on the Circular No. 984/8/2014-CX. dtd.16.09.2014.

DISCUSSION AND FINDINGS:

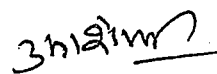
9. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. The matter involved in the appeal is the refund of the amount deposited by the Appellant during the course of investigation and also the pre-deposit amount paid by the Appellant while filing appeal with the Appellate authority. As per No. 984/8/2014-CX. dtd.16.09.2014, all payments made during the course of investigation, can be considered as a pre-deposit. The appellant has indicated that they had paid an amount of 7,74,954/-, during the course of investigation. The

appellant had also paid Rs. 15,45,000/-, as pre-deposit amount on 13.11.2007, as required by the Tribunal. Thus, the appellant had paid an amount of Rs.23,19,954/-, in this matter. As per Para No.5.4 of the said Circular dt. 16.09.2014, in the event of a remand, refund of the pre-deposit shall be payable along with interest. The appellant had sought a refund of Rs.7,95,913/-, only which should have been granted as the same is well within the limit of the total amount of pre-deposit paid by the appellant. Pre-deposit for filing appeal is not a payment of duty and hence the appellant's claim for refund of Rs.7,95,913/-, is allowed.

10. I, therefore, allow the appeal of the appellant and set aside the impugned order dt.09.11.2016, with consequential relief.

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

11. The appeal filed by the appellant, stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स)

ATTESTED



(R.R. NATHAN)

SUPERINTENDENT,

CENTRAL TAX APPEALS,

AHMEDABAD.

To,

M/s. Swiss Parenterals Pvt. Ltd.,

809, Kerala Industrial Estate,

Near Bavla, Dist. Ahmedabad-382220.

Copy to:

- 1) The Chief Commissioner, Central Tax, GST, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad-North.
- 3) The Dy./Asst. Commissioner, Division-V, Central Tax, GST, Ahmedabad (North), Ahmedabad.
- 4) The Asst. Commissioner(System), Central Tax, Hqrs., Ahmedabad (North).
- 5) Guard File.
- 6) P.A. File.

