



आयुक्त का कार्यालय, (अपीलस)  
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.): **V2(30)122 /North/Appeals/ 2018-19**

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-113-18-19**

दिनांक (Date): **09-Nov-18** जारी करने की तारीख (Date of issue): 6/12/2018

श्री उमा शंकर, आयुक्त (अपील) 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 **39/Ref/V/17-18** Dated: **11/07/2018**

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

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

**M/s Amneal Pharmaceuticals 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

(b) In case of rebate of duty or excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल है।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इयूटी 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 (न.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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(१) 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. के 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.

(२) 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 रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-  
Appeal to Customs, 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 सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सावधानिक 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 यथार्थिती 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 यथार्थिती 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।

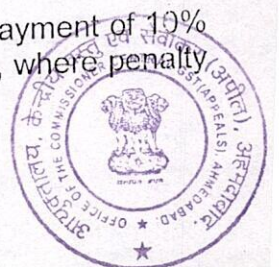
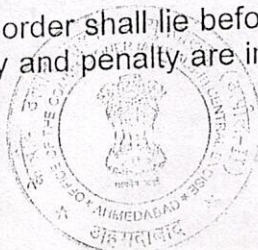
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 संबन्ध में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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 appeal has been filed by M/s. Amneal Pharmaceuticals Company (I) Pvt. Ltd, 882/1-871, Sharkhej-Bavla Highway, Nr. Hotel Kankavati, Vill. Rajoda, Taluka-Bavla, Dist: Ahmedabad-382 220 (hereinafter referred to as "the appellants") against the Order-In-Original No. 39/Ref/V17-18 dated 14.09.2012 issued on 11.07.2018 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST, Division-V, Ahmedabad (North) (hereinafter referred to as the 'Adjudicating Authority').

2. Briefly stated the facts of the case are that the appellants are a 100% EOU holding Service Tax Registration bearing No.AAGCA0781KXM001 had filed a refund claim of Rs. 34,19,760/- under Rule 5 of Cenvat Credit Rules, 2004 read with the Notification No. 27/2012-C.E.(N.T.) dated 18.06.2012 (hereinafter referred to as "the said notification" for the sake of brevity) for the refund of the CENVAT credit paid by them for the process loss/wastage. The said appellants used to send their goods for job work to a 100% EOU and had undertaken to pay the central excise duty on process loss/wastage. It was found that the Circular No. 35/2002-Cus. dtd. 07.10.2002 and Circular No. 26/2003-Cus. dtd. 01.04.2003 which had been mentioned by the appellants in their refund claim did not highlight anything about process loss during job work. Therefore, it could not be determined from both the circulars that duty is not liable to be paid on the process loss during the job work. Accordingly it was found that the appellants were liable to pay duty on the process loss during the job work and therefore the appellants were not eligible for refund. Accordingly a show cause notice dtd. 15.02.2018 was served upon the appellants proposing rejection of the refund claim. The Adjudicating Authority, vide the impugned order rejected refund claim of Rs. 34,19,760/- on the grounds mentioned in the show cause notice.

3. Being aggrieved by the impugned order, the appellants have filed this appeal against the impugned order on the grounds as mentioned under:

a) The impugned order is a non-speaking order and does not record any specific findings or provide any justification for rejecting the claim and that it has been passed in complete disregard to the case laws cited by them and the detailed submissions made by them;

b) There are no provisions under central excise act and rules to pay duty on process loss and in the circular No. 65/2002-Cus dtd. 07.10.2002 as amended, there is no mention of recovery of duty on process loss and it is



therefore clear that the appellants are not liable to pay any duty on process loss;

c) The proviso 2(i) of the Notification No. 22/2003-CE dtd. 31.03.2003 provides that waste or scrap or remnants generated during such processes at the job worker's premises is either returned to the use industry or is cleared on payment of duty as if cleared into Domestic Tariff Area by the said user industry;

d) They seek reliance on the case laws of Voltamp Transformers Ltd. vs. CCE, Vadodara-II - 2015 (329) ELT-380 (Tri.Ahd.), CCE., Mumbai vs. Bharat Radiators Ltd. - 2002 (148) ELT-1101 (Tri.Mum.), Tata Motors Ltd. vs. CCE, JSR - 2011 (264) ELT-385 (Tri.Kol.), CCE., Bhopal vs. Vema Metal & Conductor Ltd.- 2007 (213) ELT-719 (Tri.Del.), Kirloskar Oil Engines Ltd. vs. CCE, Nasik - 2017 (349) ELT-299 (Tri.-Mum.), Jakap Metind Pvt. Ltd. vs. Commissioner of Customs & C. Ex. - 2017 (356) ELT-279 (Tri.-Mum.) and some others;

e) The process loss is different from scrap, waste or remnants generated during processing;

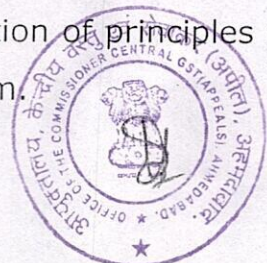
f) An EOU is not required to pay duty even on generation of scrap as long as the job worker is not in domestic tariff area;

g) The circulars are binding upon the department;

h) There is a violation of natural justice as they did not receive show cause notice rather such notice was physically handed over to the appellants during personal visit to the department on 19.06.2018 and they were unable to attend any of the personal hearings. Even though they requested for grating time for replying to the SCN vide letter dtd. 21.06.2018, the department did not provide any opportunity of being heard and passed the order by violating the principles of natural justice.

5. Personal hearing in the case was held on 11.10.2018 wherein Shri Pratik Mehta, Sr. Manager (Corporate Affairs) and Shri Sagar Vaja, Executive (Corporate Affairs) appeared on behalf of the appellants and reiterated the grounds of appeal.

5. I have carefully perused the documents pertaining to the case and submitted by the appellants along with the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing in which the appellants have argued that the impugned order has been passed in violation of principles of natural justice as no personal hearing was afforded to them.



7. I find that while going through the show cause notice, there is no mention of date but it has been signed on 15.05.2018 and in the show cause notice itself, three dates i.e. 18.05.2018, 21.05.2018 and 25.05.2018 have been given in para 10. I further find that this show cause notice has been served upon the appellants by hand on 19.06.2018 at 1635 hrs. it is incomprehensive as to how personal hearing can be attended by the appellants when it has been received after one month and the dates have already lapsed. Further I find that the impugned order has been passed on 17.07.2018 i.e. within less than one month of the service of the show cause notice. In view of this, I hold that the rejection of rebate claim in gross violation of the principles of natural justice is not acceptable and is liable to be set aside.

8. Accordingly, without going into the merits of the case, I remand the issue to the adjudicating authority who shall pass a speaking order after providing the appellants a reasonable opportunity of personal hearing. In view of the findings given above, the impugned order is set aside and the case is remanded to the adjudicating authority for decision in view of the directions given above.

9. The appeal is disposed off accordingly.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है!

*उमाशंकर*

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:



सत्यापित

*R.P.A.D.*  
(धर्मद्र उपाध्याय)  
अधीक्षक (अपील्स),  
केंद्रीय कर, अहमदाबाद

**By R.P.A.D.**

To:

M/s. Amneal Pharmaceuticals Co. (I) Pvt. Ltd,  
882/1-871, Sharkhej-Bavla Highway,  
Nr. Hotel Kankavati,  
Taluka-Bavla,  
Dist: Ahmedabad-382 220

**Copy To:-**

1. The Chief Commissioner, Central Excise, Ahmedabad zone.
2. The Commissioner, CGST, Ahmedabad (North).
3. The Dy./Asst. Comm'r, CGST, Division-V, Ahmedabad (North).
4. The Assistant Commissioner, System-Ahmedabad (North)
5. Guard File.
6. P.A. File.