



सत्यमेव जयते

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



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎: 079-26305065

टेलिफैक्स : 079 - 26305136

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क फाइल संख्या (File No.): V2(29)181 /North/Appeals/ 2018-19 / 10397 to 10401
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-195-18-19
दिनांक (Date): 28/02/2019 जारी करने की तारीख (Date of issue): 7/5/2019
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by Shri Uma Shanker , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No 05/DC/D/2018/AKJ Dated: 11/02/2018
issued by: Deputy Commissioner-Central Excise (Div-IV), Ahmedabad North,

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

M/s Cadila Healthcare 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 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 |



(b) In case of rebate or 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 क्रेडीट 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 सावधानेक क्षेत्र के बैंक का 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 पढ़ी 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 not withstanding 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।

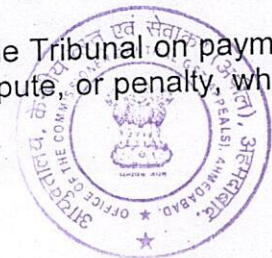
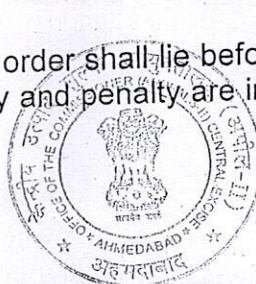
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

This appeal has been filed by M/s. Cadila Healthcare Limited, API Division- Ahmedabad, Block No. 265, 266 and 267, Opp. Laxminarayan Petrol Pump, Sarkhej Bavla, NH No. 8, Changodar, Tal. Sanand, Dist. Ahmedabad [for short –‘appellant’] against OIO No. 5/DC/D/2018/AKJ dated 2.11.2018 issued on 19.11.2018, passed by the Deputy Commissioner, CGST, Division IV, Ahmedabad North Commissionerate [for short –‘adjudicating authority’].

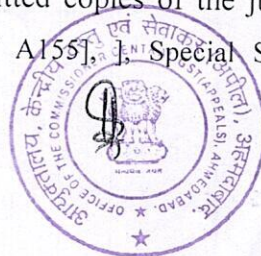
2. The facts briefly are that during the course of audit of the records of the appellant for the period from April 2014 to March 2017, it was observed that the appellant had cleared excisable goods on inter unit transfer basis to group companies on estimated value of 110% of cost of production of goods instead of clearing at the 100% of the actual cost of production. On going through the final CAS-4 certificate, produced by the appellant it was observed that the appellant had short paid duty of Rs. 37,79,567/- during the financial year 2014-15 to 2016-17. Consequent to the internal audit, a show cause notice dated 26.7.2018 was issued to the appellant, *inter alia*, demanding the duty short paid along with interest and further proposing penalty on the appellant under Section 11AC (1)(c) of the Central Excise Act, 1944 and under Rule 25 of the Central Excise Rules, 2002.

3. This notice was adjudicated vide the aforementioned impugned OIO dated 2.11.2018, wherein the adjudicating authority confirmed the demand of the duty short paid along with interest and further imposed penalty equivalent to the duty short paid under Section 11AC(1)(c) of the Central Excise Act, 1944.

4. Feeling aggrieved, the appellant has filed this appeal raising the following grounds:

- that the adjudicating authority has committed error by demanding duty in respect of goods cleared by M/s. Restech, who is not a related person; that the name of the said buyer was included by mistake; that the demand of duty upto this extent is not correct;
- that the matter is revenue neutral; that **the bulk drugs manufactured** and supplied by the appellant to their Goa, Gujarat and Diu & Daman units were used captively by them to manufacture **duitable final products** and whatever duty higher or lower paid by the appellant would have been available as credit to the appellant’s sister units to whom it was supplied;
- that they would like to rely on the judgements of Ineos ABS Limited [2010(254) ELT 628] and [2011(267) ELT A155], Narayan Polyplast [2005(179)ELT 20], Narmada Chematur Pharmaceutical [2005(179) ELT 276], Textile Corporation Marathwada Limited [2008(231) ELT 195(SC)], Jamshedpur Beverages [2007(214) ELT 321], Coca Cola India P Ltd [2007(213) ELT 490(SC)], SRF India [2007(220) ELT 201 and [2016(360) ELT 1016], Special Steel Limited [2015(329) ELT 449] and 2016 (334) ELT A123(SC)];
- that the notice is hit by limitation of time;
- that the appellant had never suppressed any details in the returns or any information relating to clearance to their sister units;
- that no penalty is imposable.

5. Personal hearing in the matter was held on 29.1.2019 wherein Shri Kaza Subrahmanyam, Consultant, appeared on behalf of the appellant and reiterated the grounds of appeal. The appellant vide letter dated 29.1.2019, also submitted copies of the judgement of Ineos ABS Limited [2010(254) ELT 628] and [2011(267) ELT A155], Special Steel Limited



[2015(329) ELT 449] and 2016 (334) ELT A123(SC)] and Anglo French Textiles [2018(360) ELT 1016].

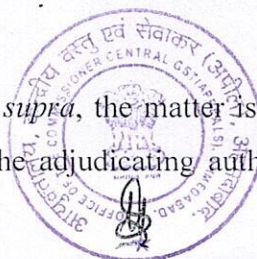
6. I have gone through the facts of the case, the grounds of appeal and the oral submissions made during the course of personal hearing. The basic question to be decided is whether the appellant is liable for payment of duty, short paid or otherwise.

7. On going through the grounds of appeal, one thing is clear that the appellant is not contesting the demand on merits. He is also not questioning the finding of the adjudicating authority wherein he has relied on Board's circular no. 692/08/2003-Cx dated 13.2.2003, and Rules 8 and 9 of the Central Excise Valuation (Determination of the price of excisable goods) Rules, 2000, while confirming the demand.

8. However, the appellant has questioned the inclusion of the clearances made to M/s. Restech – claiming that even before the adjudicating authority they had pleaded that the said buyer [M/s. Restech] was not a related person. The adjudicating authority in *para 34* of his impugned OIO, has dealt with the issue by giving his findings wherein he states that it was the appellant who vide his letter dated 2.4.2018, submitted a list of transactions made to related parties in which M/s. Restech Pharmaceuticals was included; that the data was given on his own volition; that since the appellant had already accepted the transaction with above buyer as related party transaction the argument now that they are not related, is not acceptable. The appellant however, in *para 2* of his grounds of appeal, has admitted that the inclusion of M/s. Restech, was through oversight. The adjudicating authority, after going into the matter, should have given a proper finding, instead of just brushing aside the issue. When the adjudicating authority, is confirming a demand, primarily on the grounds that these are related party transactions wherein goods need to be valued in a certain way, a proper finding ought to have been given that they are related especially so when the appellant claims that they are not related party. **The findings, recorded in para 34 of the impugned OIO are therefore not tenable.** The issue needs to be dealt with in depth because **only and only** if M/s. Restech was a related party, could the demand based on clearances to M/s. Restech, could have been confirmed.

9. The next ground which the appellant has raised very vociferously is that - the matter is **revenue neutral**. He has relied upon a plethora of judgements. The adjudicating authority has given his findings in *para 36* of the impugned OIO. However, I find that the adjudicating authority should have gone through each of the cited case laws and discussed it threadbare and given his findings, as to why this would not be applicable to the present dispute, in case he felt so. Having not done so and for the reasons cited in *para supra*, I find that justice would be served if the matter is remanded back to the adjudicating authority to give his findings on the same.

10. In view of my observations in *paras supra*, the matter is remanded back to the original adjudicating authority. Needless to state, the adjudicating authority will give proper



findings in terms of my observations above and duly follow the principles of natural justice while deciding the matter.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
11. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date: 24.2.2019

Attested,

Vinod

(Vinod Lukose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.

By RPAD.

To,

M/s. Cadila Healthcare Limited,
API Division-Ahmedabad,
Block No. 265, 266 and 267,
Opp. Laxminarayan Petrol Pump,
Sarkhej Bavla, NH No. 8,
Changodar, Tal. Sanand,
Dist. Ahmedabad.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad North Commissionerate.
3. The Assistant Commissioner, Central Tax Division- IV, Ahmedabad North Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad North Commissionerate.
- ✓ 5. Guard File.
6. P.A.

