



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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क फाइल संख्या (File No.): V2(30)197 /North/Appeals/ 2018-19 / 10556 to 10560
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-226-18-19
दिनांक (Date): 29/03/2019 जारी करने की तारीख (Date of issue): 14/05/2019
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 18/D/03 Dated: 30/06/2003
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~~ M/s Core Healthcare Ltd (Aculife Healthcare 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।



(D) In case of rebate of duty or excise on goods exported to any country or territory outside India or 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 सावधानिक क्षेत्र के बैंक को 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।

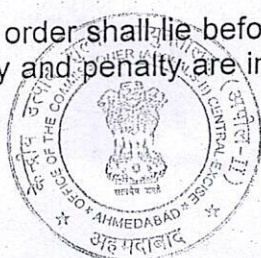
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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



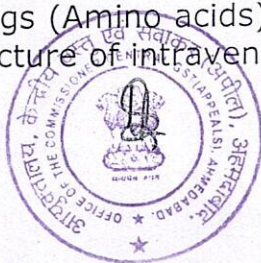
ORDER-IN-APPEAL

This appeal of M/s. Core Healthcare Ltd., Village-Sachana, Viramgam, Ahmedabad (for short - 'appellant') filed against OIO No. 18/D/03 dated 30.06.2003 (for short - "impugned order), passed by the Deputy Commissioner, Central Excise (Rural), Division-IV, Ahmedabad-II for short - 'adjudicating authority') is being taken up in de novo proceedings in view of the directions given in the order No. A/12251/2018 dtd. 04.10.2018 passed by the CESTAT, Ahmedabad.

2. Briefly, the facts are that a show cause notice dated 17.01.2003 was issued to the appellant, alleging that they had imported Bulk Drugs namely Amino Acid at concessional rate of duty under Notification No. 16/2000-Cus dtd. 01.03.2002 (Sr. No. 80B of the table) and under Notification No. 17/2001-Cus dtd. 01.03.2001 (Sr. No. 81B of the table) issued under sub-section (1) of Section 25 of the Customs Act, 1962. The exemption was available on the condition that the imported material would be used in the manufacture of intravenous amino acids whereas the appellant used the imported material in manufacture of intravenous amino acids which contained carbohydrates/ electrolytes. The CBEC Board, vide its circular no. 45/2000-Cus. dtd. 16.05.2000, had also clarified that the benefit of concessional rate of duty under Notification No. 20/99-Cus. dtd. 28.02.1999 and 16/2000-Cus. dtd. 01.03.2000 is not extended to intravenous amino acids containing carbohydrates and electrolytes. The said show cause notice proposed for recovery of Rs. 16,80,810/- being duty not paid with interest. Vide the impugned OIO, the adjudicating authority decided the aforementioned show cause notice wherein he confirmed the demand along with interest. Being aggrieved by the impugned order, the appellant appealed before the Commissioner (Appeal) who, vide the Order-in-Appeal No. 2/2005(2-A-II)CE/DK/Comr(A) dtd. 16.02.2005 rejected the appeal for non-compliance of provisions of Section 35 of the Central Excise Act, 1944. Having travelled through various appeal forums, this case has come to be remanded for de novo proceedings vide order No. A/12251/2018 dtd. 04.10.2018 passed by the CESTAT, Ahmedabad.

3. The appellant has filed this appeal on the following grounds:

- a) That the condition laid down in the aforesaid two notifications qua import of bulk drugs is the condition regarding its use in the medicines listed which is being fulfilled by the appellant in as much as the said bulk drugs (Amino acids) imported by them are used by them in the manufacture of intravenous amino acids for which there is no dispute;



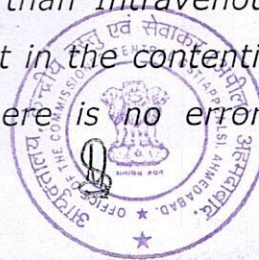
- b) That there is nothing to show that the said benefit could not be available qua bulk drugs which are imported and used in manufacture of intravenous amino acids containing carbohydrates and electrolytes. Intravenous amino acids containing carbohydrates and electrolytes do not cease to be intravenous amino acids in as much as intravenous amino acids is a general terminology;
- c) That the Notifications under which the goods have been imported are issued under Section 25 of the Act and has full force of law. It is therefore a delegated piece of legislation;
- d) They also rely on the case of Tablets (India) Ltd. vs. UOI – 2005 (191) ELT-280 (Tri-Chen.) and this decision has been affirmed by the Hon'ble Supreme Court as reported in 2006 (198) ELT-A36 (S.C.).

4. Personal hearing in the matter was held on 27.03.2019 in which Shri Vikram Singh Jhala, A.G.M. in the appellant company appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal. He further submitted that in addition to the case law of M/s Tablets (India) Ltd., case law of M/s Fresenius Kabi India Pvt. Ltd. – 2010 (256) ELT-257 (Tri-Mum.) is also relied upon.

5. I have gone through the facts of the case, the appellant's grounds of appeal, and submissions made during the course of personal hearing. The issue to be decided is whether the demand of differential duty of Rs. 16,80,810/- confirmed in terms of wrong availment of exemption notifications is correct or otherwise.

6. I find that the dispute is due to the Circular No. 45/2000-Cus., dated 16-5-2000 through which the Board sought to clarify that Keeping in view the opinion given by the Directorate General of Health Services (DGHS), New Delhi, it was decided **not to extend** the benefit of the above exemption to intravenous amino acids containing carbohydrates and electrolytes (emphasis supplied). The appellant has sought support from the case law of M/s Tablets (India) Ltd. decided by the Tribunal of Chennai and this has been affirmed by the Hon'ble Supreme Court of India. The Tribunal has held and I quote the relevant part as under:

"2. We have heard both sides and perused the records. There is no dispute that the imported bulk drugs were for use in Intravenous Amino Acid. Therefore the exemption was correctly availed. There is also no case that the branded medicines manufactured by the appellant from the imported bulk drugs were also Intravenous Amino Acids. The additional presence of Sorbitol or Glucose does not make the manufactured drugs other than Intravenous Amino Acid. In the circumstances, there is no merit in the contention that the exemption had been wrongly availed. There is no error in the order of the



Commissioner (Appeals) which allowed the respondent the benefit of the notification. Appeal filed by the Revenue is rejected."

7. I also find that the Hon'ble Supreme Court of India has affirmed this order as reported in 2006 (198) E.L.T. A36 (S.C.). In view of the above, I find that the impugned order is required to be set aside and I accordingly set aside the impugned order and allow the appeal.

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

उमा शंकर

(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. Core Healthcare Ltd.,

Village-Sachana,

Viramgam,

Ahmedabad



Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (North),
- (3) The Dy./Astt. Commissioner, CGST, Div.-IV, Ahmedabad (North),
- (4) The Dy./Astt. Commissioner (Systems), CGST, Ahmedabad (North),
- ✓ (5) Guard File,
- (6) P.A. File.