



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(21)117/North/Appeals/ 2018-19 / 10586 to 10590

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-237-18-19

दिनांक (Date): 28/03/2019 जारी करने की तारीख (Date of issue): 15/05/2019

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 45/Refund/2018 Dated: 14/06/2018

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 Acme Diet Care 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

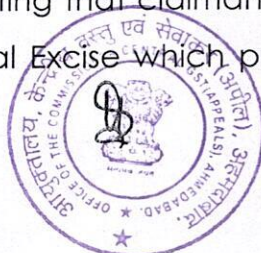
(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



**ORDER-IN-APPEAL**

M/s. Acme Diet Care Pvt Ltd, Changodar, Ahmedabad (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.45/REFUND/2018-19/AKJ dated 14.06.2018 (henceforth, "impugned order") passed by the Deputy Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad-North (henceforth, "adjudicating authority").

2. Briefly stated, the facts leading to present appeal are that the appellant, a manufacturer of edible preparation holding central excise registration filed refund claim dated 14.09.2011 for amount lying unutilized in their PLA and CENVAT credit account which was rejected by the adjudicating authority by order dated 29.02.2012 except PLA portion for the reasons that original record were not provided, details of stock of input/capital goods, semi-finished & finished goods were not provided resulting in non fulfillment of condition of Noti.No.35/2011-CE dated 26.06.2011; that registration surrendered cannot be accepted looking to huge dues pending; that details of export not provided resulting violation of provisions of Noti.No.5/2006-CE(NT) dated 14.03.2006 etc. Appeal against said order dated 29.02.2012 was decided vide Order In Appeal No.241/2012(Ahd-II)CE/AK/Commr(A)/Ahd dated 28.09.2012/01.10.2012 remanding the matter back to the adjudicating authority for verification of documents and quantification of refund. The claim was again rejected under second adjudication order dated 30.08.2013 on the grounds that claimant could not produce relevant documents; that no enabling provisions for refund on closure of factory available except in case of credit accumulated on account of export of finished goods under bond as provided under rule 5 of Cenvat Credit Rules, 2004 and Noti.No.5/2006-CE(NT) dated 14.03.2006, which the appellant has not referred; that since goods were not exported after March 2010, claim filed on 19.09.2011 hit by limitation under Section 11B of C.Ex.Act,1944; that the appellant was able to utilize Cenvat credit towards domestic clearance made during 2009-10 and hence conditions of Noti.No.5/2006-CE(NT) dated 14.03.2006 not fulfilled, etc. Appeal preferred against order dated 30.08.2013 was decided under OIA dated 17.01.2014 remanding it back with direction to grant personal hearing and to consider all ground of appeal and to pass a fresh order. Under order dated 09.02.2016 the adjudicating authority again rejected the refund claim stating that claimant has not mentioned any rule of Cenvat Credit or Central Excise which provides for refund of



unutilized credit amount; that no such provision are there in rule 10 of Cenvat Credit Rules, 2004 in this regard; that conditions of Noti.No.5/2006-CE(NT) dated 14.03.2006 has not been fulfilled. Since appeal filed against this order was also rejected under Order-In-Appeal No.OIA-AHM-EXCUS-002-APP-099-16-17 dated 27.03.2017, the appellant challenged it to CESTAT,Ahmedabad who under order No. A/10179/2018 dated 10.01.2018 stated that the Commissioner Appeal under order dated 28.09.2012 had sent back the matter for verification of document and quantification of refund, litigation entered by going into merit of the case by lower authorities were unwanted. It was also observed that directions of first appellate authority were not challenged, the matter had reached its finality and directed to quantify the amount of refund that needs to be sanctioned in pursuance of the direction given by first appellate authority under OIA dated 28.09.2012.

3. Acting in pursuance of said directions of Hon'ble CESTAT, the impugned order was passed wherein also refund claim was rejected on the ground that nowhere in the Commissioner Appeals order dated 28.09.2012 any provision/rule or law has been quoted under which refund of unutilized Cenvat credit is to be given; that Hon'ble CESTAT have directed to quantify the amount of refund in pursuance of direction of first Appellate authority without mentioning adjudicating authority under which to do such quantification; the claim is not made under rule 5 of Cenvat Credit Rules,2004 by the appellant under which cash refund of Cenvat credit accumulated and could not be utilized due to export under bond of finished goods; that such cash refund is subject to following of procedure/conditions of Noti.No.5/2006-CE(NT) dated 14.03.2006; that since no export has taken place after March 2010, any refund claim filed after one year (including present claim dated 19.09.2011) is hit by limitation as per Section 11B of C.Ex.Act,1944; that after applying the formula given under rule 5 of Cenvat Credit Rules,2004 for this purpose, the refund amount comes to Rs. 0/-(zero); that none of the conditions of rule 5 of Cenvat Credit Rules,2004 is satisfied, refund is not admissible; that refund is not a matter of right unless vested by law and no injustice or hardship can be raised as plea to claim refund in absence of statutory mandate, etc.,

4. Being aggrieved with the impugned order, the appellant preferred this appeal contesting *inter alia* that since Hon'ble CESTAT have



remanded the case back to quantify the amount of refund, the adjudicating authority could not have rejected the refund entering into merit of the case and could not have expanded the scope of denovo adjudication; that it was specifically observed under order dated 10.01.2018 by CESTAT that order dated 1.10.2012 of first appellate authority has attained finality and further litigation related to merit of the case is unwarranted, however adjudicating authority gone into finding of the Order-In-Appeal and held that provision/rule for quantification of refund not quoted by first appellate authority and even by Hon'ble Appellate Tribunal, this is disregard to the directions of higher forum/tribunal/court,; that Hon'ble Tribunal has not left any scope for looking into the merits; that no personal hearing was given, impugned order is passed in clear violation of principle of natural justice for which specific provisions has been made in the statute, the appellant has well within its right to claim the interest; they mentioned case law in respect of Union of India v/s Slovak India Trading Co Ltd confirmed by Hon'ble Supreme Court reported in 2008 (223) ELT A 170(SC) , Commissioner of C.Ex.Nasik v/s Jain Vanguard Polybutlene Ltd 2015 (326) ELT 886 wherein view is taken that cash refund in such a kind of situation is available. They also made reference of another case law of Commr. C.Ex. v/s Ishan Copper Pvt Ltd stating that Hon'ble High Court of Gujarat has dismissed appeal of Revenue wherein issue was refund of accumulated Cenvat credit due to disproportionate rate of duty. Etc.,

5. In the personal hearing held on 11.10.2018, Shri Deval Shah advocate and Shri Narendra Thakkar reiterated the grounds of appeal and submitted copies of order in case of M/s E I Dupont India Pvt Ltd v/s UOI and filled additional written submission under letter dated 11.08.2018 mainly stating that adjudicating authority has grossly violated the principle of judicial discipline and judicial hierarchy by going into merit of the case and rejecting refund; that rule 5 of Cenvat Credit Rules, 2004 does not expressly prohibit refund of unutilized credit on closure of factory, they emphasized on case law in respect of Union of India v/s Slovak India Trading Co Ltd confirmed by Hon'ble Supreme Court reported in 2008 (223) ELT A 170(SC), referred Kamlakshi Finance Coro v/s UOI 1990(47) ELT 231(Bom.) stating on misuse of quasi-judicial power and instruction F.No. 201/01/2014-CX.6 dated 26.06.2014 issued by CBEC on judicial discipline in adjudicating proceedings; they cited various case laws also and stated that an amount of Rs.18,29,800/- stands quantified for refund.



6. I have carefully gone through the appeal wherein the issue of eligibility of refund of accumulated CENVAT credit lying unutilized at the time of closure of factory and surrender of Central Excise registration is concerned. I find that the appellant, a manufacturer of edible preparation, surrendered their Central Excise registration on 10.08.2011 and filed refund claim on 14.09.2011 which was rejected (except Rs.11068/- being PLA balance) by the adjudicating authority on 29.02.2012, 30.08.2013, 09.02.2016 and lastly under impugned order dated 14.06.2018. The Order-In-Appeal dated 27.03.2017 challenged by the appellant in CESTAT was decided under order No. A/10179/2018 dated 10.01.2018 by Hon'ble CESTAT, WZB, Ahmedabad wherein appeal was allowed. The impugned order is passed in pursuance of the directions given by Hon'ble CESTAT in said order. The appellant has mainly contested that Hon'ble CESTAT have remanded the case back for quantification of refund amount. However, the adjudicating authority entered into merit of the case and rejected the refund, They also contested that it was specifically observed by CESTAT that order dated 1.10.2012 of first appellate authority has attained finality and further litigation related to merit of the case is unwarranted, however adjudicating authority gone into finding of the Order-In-Appeal and held that provision/rule for quantification of refund not quoted by first appellate authority and even by Hon'ble Appellate Tribunal, this is disregard to the directions of higher forum/tribunal/court. It was further pleaded that no personal hearing was given and hence the impugned order is passed in clear violation of principle of natural justice.

7. On going through the impugned order, I find the adjudicating authority initiated the process of quantification of refund amount which ultimately has resulted in rejection of refund. If sufficient data for calculating the refund amount were not available on record, the adjudicating authority should have attended the process after taking on record any further details/data required from the appellant before deciding the matter against him. I find that the claim was rejected without awarding the appellants the opportunity of being heard and not providing opportunity to provide any further details/data/record required. Attention of the adjudication authority in this regard was already drawn under para 5.8 of the Order In Appeal No.241/2012(Ahd-II)CE/AK/Commr(A)/Ahd dated 28.09.2012/01.10.2012 while remanding the matter back for verification of documents and quantification of



refund. Said submission of the appellant has not been addressed and justified yet by the adjudication authority. It was specifically mentioned at para 5.9 of OIA supra that:

**5.9 The above mentioned arguments of the appellants need to be answered and distinguished while deciding the appeal. I also observe that the technical deviations or procedural lapses are to be condoned if there is sufficient evidence as the export of duty paid goods, therefore the refund is admissible however for verification of documents and quantification of refund, it is sent back to the adjudicating authority.** In support of this I rely upon the case of oc Commissioner of Central Excise, Pune-I Vs. Sai Adventium Ltd reported in 2012(27) STR46(Tri.Mumbai) wherein vide Para 3 and 4 of the order , the Hon'ble Tribunal has observed that Commissioner(Appeal) has passed an appropriate order in accordance with law by remanding the matter back to adjudicating authority for requantification/verification of documents. "

8. The adjudication authority has not only failed in complying with the above observations but has not obeyed the directions of Hon'ble CESTAT CESTAT, Ahmedabad who under order No. A/10179/2018 dated 10.01.2018 observed as under:

9. As against the above produced portion of the order dated 01.10.2012, **no appeal has been preferred by the Revenue.** In my view, the **order of First Appellate authority dated 1.10.2012 has attained finality** in respect of the litigation entered by the appellant and amounts lying in balance in the Cenvat account. In my view, **further litigation which has been entered into by the lower authorities by going into merits of the case is unwanted and the Adjudication Authority should have granted the refund to the appellant** following the directions given by the First Appellate authority in OIA dated 1.10.2012.

10. On this point itself the impugned order is liable to be set aside and the lower authorities to are **directed to quantify the amount of refund** that needs to be sanctioned to the appellant herein in pursuance of the directions of the First Appellate authority in OIA dated 1.10.2012; **refund the same in case.**

9. I find that the adjudicating authority has shown arrogant approach and utter disregard to judicial indiscipline by not implementing said clear observations and directions of both the higher forums. I'm therefore, this time also, inclined to remand the case back to the adjudicating authority to pass a fresh order on merit observing the above directions ensuring principle of natural justice, and I do so. In order to refund the amount due, the adjudicating authority shall scrupulously and particularly follow the



observations/directions available at para 5.8 and 5.9 of the Order In Appeal No. 241/2012(Ahd-II)CE/ AK/ Commr (A)/ Ahd dated 01.10.2012 and at para 9 and 10 of order No.A/10179/2018 dated 10.01.2018 of Hon'ble CESTAT, Ahmedabad.

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

The appeal filed by the appellant stands disposed of in above terms.

*उमा शंकर*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested

*D.A. Parmar*

(D.A. Parmar)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad



By R.P.A.D.

To,

M/s. Acme Diet Care Pvt Ltd,  
14/1, Panchratna Industrial Estate, Sarkhej-Bavla Road,  
Changodar, Ahmedabad.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - North.
3. The Additional Commissioner, Central Tax (System), Ahd.-North.
4. The Asstt./Deputy Commissioner, CGST Division-IV, Ahmedabad - North.
- ✓ 5. Guard File.
6. P.A. File

