



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.

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5443/05447

क फाइल संख्या (File No.) : V2(29)69 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-36-18-19

दिनांक (Date): 30-Jul-18 जारी करने की तारीख (Date of issue): 8/8/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-1), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No 17/AC/DEMAND/17-18 Dated: 04/04/2018

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

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

M/s Dishman Pharmaceuticals & Chemicals 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 ।



- (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, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैटल हॉस्पिटल 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 इ.ए-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 रूपरुप 5 लाख या उससे कम है वहां रूपरुप 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपरुप 5 लाख या 50 लाख तक हो तो रूपरुप 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपरुप 50 लाख या उससे ज्यादा है वहां रूपरुप 10000/- फीस भेजनी होगी।



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 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।

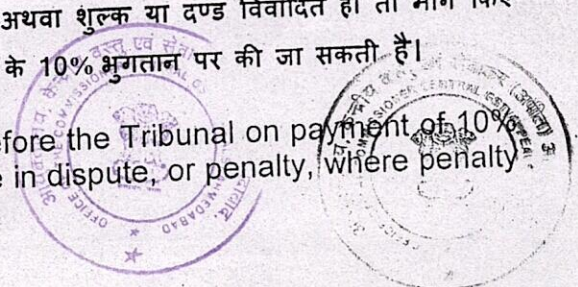
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

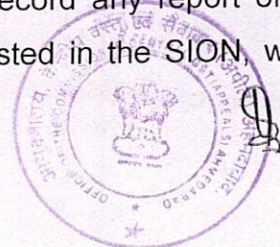


ORDER-IN-APPEAL

During the audit of the records of **M/s Dishman Pharmaceuticals & Chemicals Ltd.**, [100% EOU], 1216/11, 1216/24 to 27, Phase-IV, G.I.D.C., Naroda, Ahmedabad – 382 330 (hereinafter referred to as 'the appellant'), engaged in the manufacture of Bulk Drugs and Fine Chemicals falling under Chapter 29 and 38 of the first schedule to the Central Excise Tariff Act, 1985 (hereinafter CETA, 1985), it was observed that the appellant had failed to pay the anti dumping duty on Distilled Acetone cleared in DTA as recovered solvent from the Acetone imported without payment of Customs duties including Anti-dumping duty. Accordingly, a show cause notice F. No. V/16-08/Dem/Dishman/P-02/15-16 dated 05/02/2016 (hereinafter referred to as 'the SCN') was issued to the appellant demanding duty amounting to **Rs.83,355/-** under the provisions of section 28 of the Customs Act, 1962 read with section 11A(4) of Central excise act, 1944 along with interest under Section 28 of the Customs act, 1962 read with section 11AA of the Central Excise Act, 1944 and proposing to impose penalty on the appellant under Section 114A of the Customs Act, 1962 read with section 11AC of the Central Excise Act, 1944. The SCN was adjudicated by the Assistant Commissioner, C.G.S.T. & Central Excise, Division-I (Naroda), Ahmedabad North (hereinafter referred to as the 'adjudicating authority') by issuing Order-in-original No.17/AC/DEMAND/17-18 dated 31/03/2018 (hereinafter referred to as 'the impugned order'). The adjudicating order has confirmed the demand for duty and interest as proposed in the impugned order and imposed a penalty of Rs.83,355/- under section 114A of the Customs Act, 1962.

2. Aggrieved by the impugned order, the appellant has filed the instant appeal mainly on the following grounds:

- 1) The appellant, a 100% E.O.U., had filed Bill of Entry No. 3301343 dated 18/09/2013 and availed exemption from Customs duties and Anti dumping duties under a procurement certificate No. 29/2013-14 dated 06/09/2013 and cleared the same without payment of duties, informing the jurisdictional authorities about the receipt of duty free Acetone for manufacture of export goods Cetyl Pyridinium Chloride and the details of export was intimated by way of filing periodical ER-2 returns and hence the present demand for anti-dumping duty, raised after a lapse of 29 months under section 28 of the Customs Act, 1962 read with section 11A(4) of the Central Excise Act, 1944 is time barred and is hit by limitation. The appellant also wish to submit that in Circular No. 12/2008-Cus dated 24/7/2008 at para 7, it is clarified that when the inputs which are not covered under the SION are used in the manufacture of export goods and also contained in the waste generated, the duty liability on such inputs contained I the waste has to be decided by the norms committee. Acetone is not listed in the list of inputs under SION. The adjudicating authority has not brought on record any report of the norms committee wherein the items other than those listed in the SION, when



used as inputs and contained in the waste generated during the course of manufacture and cleared in DTA can be charged to duty including anti-dumping duty. In the absence of any such report of the norms committee, the entire demand of the anti-dumping duty is not at all sustainable and is liable to be set aside. Since the demands are not sustainable on merits as well as on limitation, the imposition of penalties is also not warranted and is liable to be dropped.

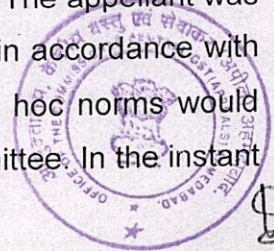
3. Personal hearing in the appeal was held on 25/7/2018. Shri R. Subramanya, Advocate appeared and reiterated the grounds of appeal. He pleaded limitation because SCN was issued after normal period.

4. I have carefully gone through the contents of the SCN, the impugned order as well as the grounds of appeal filed by the appellant and reiterated at the time of personal hearing. The issue for decision before me is whether the demand for duty on account of Anti-dumping duty foregone along with other duties of Customs on import of Acetone, confirmed in respect of Distilled Acetone cleared in DTA is sustainable or otherwise. The appellant is not disputing its liability to pay the demand amount towards Anti dumping duty on DTA clearance but is challenging the confirmation of demand on the ground of limitation and also on the ground that as Distilled Acetone was not appearing in the SION, the confirmation of demand is not sustainable without a norms committee report.

5. The procedure stipulated in Notification no. 60/2008-Cus dated 05/05/2008 for additional items other than those given in SION is as follows

(b) where additional items other than those given in SION are required as input or where generation of waste, scrap and remnants is beyond 2% of the input quantity, use of such goods shall be allowed on the basis of self-declared ad hoc norms till such norms are fixed on ad hoc basis by the jurisdictional Development Commissioner within a period of three months from the date of self declared norms and the unit shall undertake to adjust the self-declared/ad hoc norms in accordance with norms as finally fixed by the Norms Committee for the unit. The ad hoc norms will continue till such time the final norms are fixed by the Norms Committee;

From the above, it is clear that the reference made by the appellant in the grounds of appeal to the stipulations in Notification no. 60/2008-Cus dated 05/05/2008 does not support its argument because it was the appellant who was required to self-declare *ad hoc* norms based on which the clearances in DTA of such goods that were not in the SION could be made and the Development Commissioner would fix the *ad hoc* norms within a period of three months from the date of self-declared norms. The appellant was also required to undertake to adjust the self-declared *ad hoc* norms in accordance with norms as finally fixed by the Norms Committee for its unit. The *ad hoc* norms would continue till such time the final norms were fixed by the Norms Committee. In the instant



case, the appellant has given no indication that it had fixed any *ad hoc* norms that was submitted to the jurisdictional Development Commissioner for confirmation or alteration as required, eventually paving way for the Norms Committee to finalize the norms. Further, the appellant has also not claimed that it had filed any undertaking as required in Notification No. 60/2008-Cus dated 05/05/2008 to adjust the *ad hoc* norms in accordance with the norms finalized by the Norms Committee. Therefore, it is also clear that the D.T.A. clearances impugned in the instant case without payment of anti dumping duty was in contravention of the provisions of the said Notification as well as sub-section 2A of Section 9A of the Customs Tariff Act, 1975. Therefore, there is no merit in the argument of the appellant that the demand could not be confirmed without the adjudicating authority producing a norms committee report. Further, on the ground of limitation it is seen that the evasion of anti dumping duty remained suppressed till such time that the same was unearthed by Audit. The appellant had clearly failed to follow laid down procedures before making the impugned clearances in the D.T.A. Therefore, the invoking of extended period of limitation is just and proper in the present case. Accordingly, the confirmation of demand for duty along with interest and the imposition of penalty on the appellant are legally sustainable in the present case. Hence the appeal is rejected.

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

उमा शंकर

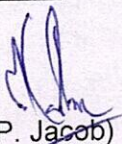
(उमा शंकर)

आयुक्त

केन्द्रीय कर (अपील्स)

Date: 30 / 07 / 2018

Attested


(K.P. Jacob)
Superintendent,
Central Tax (Appeals),
Ahmedabad.



By R.P.A.D.

To

1. M/s Dishman Pharmaceuticals & Chemicals Ltd. (100% EOU)
[Now M/s Disman Carbogen Amcis Ltd. (100% EOU)],
1216/11, 1216/24 to 27, Phase IV, G.I.D.C., Naroda,
Ahmedabad -382 330.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: I (Naroda), Ahmedabad (North).
5. Guard File.
6. P.A.