



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)30/North/Appeals/ 2019-20 /12906 to 12910
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-90-19-20
 दिनांक (Date): 24/10/2019 जारी करने की तारीख (Date of issue): 06/11/2019
 श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
 Passed by Shri Gopi Nath , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
 मूल आदेश सं _____ दिनांक _____ से सृजित
 Arising out of Order-In-Original No 1670/Refund/08 Dated: 28/11/2008
 issued by: Assistant Commissioner-Central Excise (Div-), 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 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 of 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 हो।

(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 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 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) 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 मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) 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.

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 रू.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, provided that the pre-deposit amount shall not exceed Rs.10 Crores. 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 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।

6(l) 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

This order arises on account of an appeal filed by M/s Cadila Healthcare Ltd., Survey No.417, 419 & 420, Village-Moraiya, Sarkhej-Bavla High Way, Taluka-Sanand, District Ahmedabad, Gujarat (in short '*appellant*') against the Order-in-Original No.1670/Refund/08 dated 28.11.2008 (in short '*impugned Order*') issued by the Assistant Commissioner, Central Excise Division-IV, Ahmedabad-II (in short '*the adjudicating authority*').

2. Brief facts of the case are that during the visit of the appellants's factory by the officers of the Head Quarter Preventive team of erstwhile Ahmedabad-II Commissionerate (now Ahmedabad North Commissionerate), the officers took an objection that in view of Board's Circular No.800/33/2004-CX dated 01.10.2004 cenvat credit of inputs contained in time expired medicaments is required to be reversed and the appellant accordingly had come to reverse an amount of Rs.10,85,298/- being amount related to cenvat credit of input contained in time expired medicaments destroyed within factory during the period from 01.05.2006 to 31.08.2007 along with interest amounting to Rs.1,22,264/- on 18.06.2008. Later on the appellant filed a refund claim with the adjudicating authority claiming refund of the said amount paid on the grounds that the cenvat credit amount reversed by them along with interest as referred above was not required to be done as per the Board's above circular as it was not applicable to them. The said refund claim preferred by the appellant was rejected by the adjudicating authority vide the impugned order by relying on the tribunal decision in the case of Amazon Drugs Pvt. Ltd. Vs. C.C.Ex., Bangalore [2008 (221) ELT 530 (Tri.-Bang.).

3. Aggrieved with the above Order rejecting their refund claim, the appellant has filed the present appeal mainly on the grounds that:

i) There is no change in statutory provisions prevailing during the period of April '05 to April '06 (during which refund claim of Rs.4,92,975/- was granted and finalized by CESTAT) and during May '06 to 13.09.2007 (for which the present refund claim pertains). Refund case of Rs.4,92,975/- was reached up to CESTAT, Ahmedabad and on the basis of Larger Bench decision in case of M/s Grasim Industries, settled the case in favour of appellant;

ii) The adjudicating authority has not considered the CESTAT decision in the appellant's own case for the earlier period which was delivered on basis of Larger Bench decision in the case of M/s Grasim Industries Vs. CCE, Indore [2007 (208) ELT 336 (Tri.-LB)] but considered single member bench decision of M/s Amazon Drugs Pvt. Ltd. Vs. C.C.Ex., Bangalore [2008 (221) ELT 530 (Tri.-Bang.)]. The decision of M/s Amazon Drugs Pvt. Ltd. Vs. C.C.Ex., Bangalore has been delivered by relying upon the decision of M/s Mafatlal Industries Ltd. Vs. CCE, Ahmedabad [2003 (154) ELT 543 (Tri-Mumbai). The fact in appellant's case and that of M/s Mafatlal Industries Ltd. are totally different; It is settled law that Larger Bench decision of Tribunal prevails over the decision of single bench decision. The



adjudicating authority being quasi-judicial authority supposes to follow the decision of Larger Bench in the interest of judicial discipline. Therefore, reliance placed by adjudicating authority is mis-placed and without authority of law;

- iii) The adjudicating authority has relied upon CBEC Circular No.800/33/2004/CX dated 01.10.2004 which was issued on the basis of decision of Hon'ble Tribunal in the case of M/s Mafatlal Industries Ltd. Vs. CCE, Ahmedabad [2003 (154) ELT 543 (Tri-Mumbai). Since the facts in the present case and in the case of M/s Mafatlal Industries Ltd. are clearly distinguishable, the above referred Circular is not applicable in the present case;
- iv) The issue involved in the case is settled by the following decision of Hon'ble Tribunal:
- a) M/s Universal Cables Ltd. Vs. CCE, Bhopal [2006 (200) ELT 73 (Tri.-DEL);
 - b) M/s Torrent Pharmaceuticals Ltd. Vs. CCE, Ahmedabad-II (Final Order No.A/2127/WZB/ 2005/C-I/EB dated 28.11.05;
 - c) M/s Dishman Pharmaceuticals & Chemicals Ltd. Vs. CCE, Ahmedabad [2006-TIOL-858-CESTAT-DEL];
 - d) M/s Grasim Industries Vs. CCE, Indore [2007 (208) ELT 336 (Tri.-LB)]; and
- v) The CESTAT being superior authority, it is obligatory on the part of the judicial authority to respect the judgments of the CESTAT following the established principle of law that in the event of contest between the Board circular and decision of the courts and Tribunals, the decision of the courts and tribunals prevails over the Board circular.

4. The present appeal was transferred to Call Book as a departmental appeal on similar issue for earlier period, Tax Appeal No.1864 of 2008, was pending before the Hon'ble High Court of Gujarat for decision. The Hon'ble High Court of Gujarat vide its Order dated 20.09.2018 dropped the said departmental Tax Appeal on monetary limit as per the Government's litigation policy. In view of the disposal of the departmental appeal, the present appeal was retrieved from Call Book and appeal proceedings on the same were reopened.

5. A hearing in the matter was held on 13.09.2019. Shri Amit Parmar, Associate Manager and Shri Vaibhav Vahia, Sr. Manager Taxation appeared and reiterated the submissions of appeal memo for consideration. During the hearing the appellant submitted that in view of CESTAT Order No.A/10870/2018 dated 18.04.2018 allowing their appeal filed against OIA No. OIA-109/2013/Ahd-II/AK/Commr-A/Ahd dated 03.05.2013 with consequential relief, they filed refund claim of Rs.10,85,298/- along with interest of Rs.1,22,264/- with the department and the same has been sanctioned vide OIO No.51/Refund/2018 dated 23.08.2018 passed by the Deputy Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad North. They requested to take note of the above

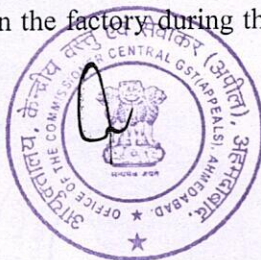


refund of Rs.10,85,298/- already received by them, for the present case. They further requested to order interest under Section 11BB of the Central Excise Act, 1944 for delayed refund.

6. I have carefully gone through the facts of the case, appeal memorandum and submissions made at the time of personal hearing. I find that similar issue on appellant's own case for earlier period, wherein refund sanctioned, stand finally settled in favour of the appellant as the department's Tax Appeal against CESTAT Order on the said issue was dropped by the Hon'ble High Court of Gujarat on monetary limits whereby the CESTAT Order appealed against therein attaining finality. Further, I find that for the issue under dispute viz. as to whether the appellant was required to reverse cenvat credit of inputs contained in the time expired medicaments destroyed within the factory during the period from 14th April 2006 to August 2007 or not, demand proceedings were initiated separately by the department. A Show cause notice F.No.V.30/15-29/086A/2008 dated 03.07.2008 was issued in this regard proposing to recover cenvat credit of Rs.10,85,298/- wrongly availed on inputs contained in time expired medicines destroyed by the appellant during the said period along with interest. This SCN was adjudicated by the Additional Commissioner vide OIO No.6/ADC/2009/PRC dated 23.02.2009 confirming the demand in the SCN along with interest and imposing penalty. The said OIO was challenged by the appellant before the Commissioner (Appeals-I), Central Excise, Ahmedabad who vide OIA No.109/2013 (Ahd-II) CE/AK/Commr(A)/Ahd dated 03.05.2013 rejected the appeal filed by the appellant. Aggrieved, the appellant filed an appeal before the Hon'ble CESTAT, Ahmedabad against the said OIA. As has been brought to notice by the appellant at the time of hearing, the Hon'ble CESTAT, Ahmedabad vide their Order No.A/10870/2018 dated 18.04.2018 set aside the OIA and allowed the appeal filed by the appellant with consequential relief. The Hon'ble CESTAT has given their decision by purely relying on the decision of the Larger Bench of Hon'ble High Court of Gujarat in the case of CCE&C, Ahmedabad-II Vs. Intas Pharmaceuticals Ltd. [2013 (289) ELT 256 (Guj.)], wherein the Hon'ble High Court has held that:

"Prior to introduction of Rule 3(5C) of Cenvat Credit Rules, 2004, there was no provision for reversal of credit lawfully taken, and it could not be done either on equitable doctrine or double benefit accruing to assessee - However, after introduction of Rule 3(5C) ibid, Legislature has made its intention clear, and reversal of credit is required - It is a new right created in favour of Revenue, and in absence of any contrary intention, it operates prospectively - Plea that amendment was clarificatory and hence retrospective, rejected in view of fact that it was notified come into effect from specified date viz. 7-9-2007 - On facts, on finished product becoming unfit for human consumption, credit taken earlier to 7-9-2007 was not required to be reversed in absence of condition to that effect imposed for remission of duty in terms of Rule 21 of Central Excise Rules, 2002. [paras 16, 18, 19, 20]

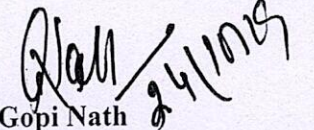
7. In view of the above facts, I find that the issue involved in the present case viz. as to whether the appellant was required to reverse cenvat credit of inputs contained in the time expired medicaments destroyed within the factory during the period from 14th April 2006 to



August 2007 or not, has already stand decided by the Hon'ble Tribunal vide their Order dated 18.04.2018 referred above and the same has been settled in favour of the appellant with consequential relief. Further, as admitted by the appellant at the time of hearing, their claim of refund in the appeal under consideration has also stand granted to them as consequential relief in terms of above said Tribunal Order vide OIO No.51/Refund/2018 dated 23.08.2018 passed by the Deputy Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad North. Thus, in view of the issue under dispute in the present appeal having already decided by CESTAT and the appellant having already received the relief sought under the appeal under consideration by way of consequential relief of the Tribunal Order, the appeal under consideration in the present case has become infructuous. The same would serve no purpose since the relief sought has already been granted by a higher forum and the appellant is already in receipt of the same. Accordingly, I dismiss the appeal as infructuous.

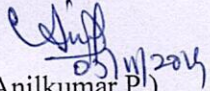
9. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellant stand disposed off in above terms.


(Gopi Nath)
Commissioner (Appeals)

Date: .10.2019.

Attested:


(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.



BY SPEED POST TO:

M/s Cadila Healthcare Ltd.,
Survey No.417, 419 & 420,
Village-Moraiya, Sarkhej-Bavla High Way,
Taluka-Sanand, District Ahmedabad.

Copy to:-

1. The Principal Chief Commissioner, Central Tax , Ahmedabad Zone..
2. The Commissioner, CGST, Ahmedabad North (erstwhile Ahmedabad-II).
3. The Deputy Commissioner, Central GST & C.Ex., Division-IV, Ahmedabad North.
4. The Assistant Commissioner, CGST (System), HQ, Ahmedabad North.
- ✓ 5. Guard file.
6. P.A. File

