



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)77/North/Appeals/ 2019-20/12928 70 12933
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-94-19-20
दिनांक (Date): 29/10/2019 जारी करने की तारीख (Date of issue): 07/11/2019
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by Shri Gopi Nath , 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/ADC/2019-20 Dated: 14/06/2019
issued by: Additional 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 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 दिनोंक 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 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, 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(I) 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

M/s. Cadila Healthcare Ltd., Survey No. 417-419, 420 Sarkhej-Bavla Road, Village-Moraiya, Taluka-Sanand, Dist-Ahmedabad-382210 (henceforth, "appellant") has filed the present appeal against the Order-In-Original No.05/ADC/2019-20 dated 14.06.2019 (henceforth, "impugned order") issued by the Additional Commissioner, Central GST & CX, Ahmedabad-North (henceforth, "adjudicating authority").

2. The facts of the case, in brief, are that the appellant, a manufacturer of dutiable as well as exempted pharmaceutical product, had exercised an option in term of Rule 6(3A) of Cenvat Credit Rules, 2004 for reversal of credit of common inputs used in dutiable as well as exempted goods. It was observed during audit by CERA that the appellant failed to reverse credit attributable to exempted goods by due dates on monthly basis but reversed the same at a later date, they were served with a show cause notice dated 16.04.2018 for recovery of interest on such delayed period, which was decided under impugned order confirming recovery of interest.

3. Aggrieved, the appellant preferred this appeal contesting *inter alia*, that Section 11AA of the Central Excise Act, 1944 has not been correctly interpreted by the adjudicating authority while making it applicable for recovery under Rule 14 of Cenvat Credit Rules, 2004; that Rule 14(1)(i) deals with a situation where an assessee has taken cenvat credit wrongly but not utilized and contemplates recovery of such wrongly taken cenvat credit only whereas Rule 14(1)(ii) applies to a case where an assessee has taken and utilized cenvat credit wrongly and contemplates recovery of such wrongly taken cenvat credit along with interest; that since entire amount of cenvat credit which was subsequently reversed, was kept intact and no part of it were utilized throughout the relevant period, their case falls under sub clause (i) of clause 14 (1) of Cenvat Credit Rules, 2004 and there is no statutory provision for payment of interest; that Rule 14(1)(ii) of Cenvat Credit Rules, 2004 is not attracted in the case; that in as much as demand is confirmed under Rule 6(3A)(vi) of Cenvat Credit Rules, 2004, the adjudicating authority committed error by traversing beyond the scope of SCN. Etc.,

4. In the Personal hearing held on 10.10.2019 Shri Amit Parmar, Associate Manager of the appellant firm reiterated the submissions of



appeal memo and furnished synopsis dated 10.10.2019 for consideration which mainly contains above mentioned grounds of appeal.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum, oral and written submissions made at the time of personal hearing. The issue requiring determination is applicability of interest on delayed reversal of cenvat credit attributable in term of in term of Rule 6(3A) of Cenvat Credit Rules,2004. It would, therefore be pertinent to identify the provisions which deals with recovery of interest from the manufacturer who opted to pay an amount determined in term of Rule 6(3A) of Cenvat Credit Rules, 2004 but fails to pay. I observe that Rule 14(1)(ii) of Cenvat Credit Rules,2004 empowers recovery of interest on cenvat credit which has been wrongly taken and utilised applying Section 11AA of the Central Excise Act,1944 *mutatis mutandis*. I reproduce Rule 14 of Cenvat Credit Rules,2004 for ease of reference:

[RULE 14. Recovery of CENVAT credit wrongly taken or erroneously refunded. — (1) (i) Where the CENVAT credit has been taken wrongly but not utilised, the same shall be recovered from the manufacturer or the provider of output service, as the case may be, and the provisions of section 11A of the Excise Act or section 73 of the Finance Act, 1994 (32 of 1994), as the case may be, shall apply *mutatis mutandis* for effecting such recoveries;

(ii) Where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply *mutatis mutandis* for effecting such recoveries.

6. Since, Section 11AA of the Central Excise Act,1944 which deals with recovery of interest on delayed payment of duty have been made applicable *mutatis mutandis*, it is very clear that every incidence of delayed payment of duty attracts interest. It is argued by the appellant that credit wrongfully availed were not utilised throughout the period in question and hence their case is not covered under Rule 14(1)(ii) but covered under rule 14(1)(i) of Cenvat Credit Rules,2004 only. Wrong availment of the credit is not disputed by the appellant. Based on this logic, it is further pleaded that the adjudicating authority has committed an error in confirming interest under Rule 6(3A)(vi) of Cenvat Credit Rules,2004, as no proposal for invocation of said rule was made in the show cause notice. On both the above argument of the appellant I observe that option to pay amount as determined under sub-rule (3A) of Cenvat Credit Rules,2004 or pay an amount of six per cent lies with the



manufacturer or producer of final product who manufactures dutiable as well as exempted goods availing cenvat credit. Once, such option is exercised, it becomes duty of such manufacturer or producer to adhere to the provisions. The mechanism available under Rule 6 of Cenvat Credit Rules,2004, is considered to be an obligation on the manufacturer or producer of final product who manufactures dutiable as well as exempted goods availing cenvat credit and hence, strict compliance of the procedure and conditions stipulated therein needs to be ensured by such manufacturers. Sub-rule (b)(vi) of Rule 6(3A) of Cenvat Credit Rules,2004 further makes it mandatory on the manufacture or provider of output service to pay interest @ 15 per cent per annum for the period of delay in case of failure in timely payment of amount so determined. Thus, the provisions for recovery of interest in such a case already exist in rule 6 of Cenvat Credit Rules,2004 and therefore, it is indisputably an obligation on the such manufacturer to pay interest on delayed payment. In view of such specific provisions for interest in rule 6(3A)(b)(vi) of Cenvat Credit Rules,2004 itself, invocation of Rule 14 of Cenvat Credit Rules,2004 read with Section 11AA of the Central Excise Act,1944 by the adjudicating authority would be an additional tool use of which cannot be considered as traverse beyond the scope of Show cause notice. The existence of said provision for interest, makes it mandatory for the appellant to discharge the interest due without being demanded by the department.

7. It is further pleaded by the appellant that their case is covered under the provisions Rule 14(1)(ii) and not under rule 14(1)(i) of Cenvat Credit Rules,2004 as they have availed cenvat credit wrongly but not utilised. In this context, I observe that both the said sub clauses i.e. rule 14(1)(i) and rule 14(1)(ii) of Cenvat Credit Rules,2004 empowers recovery of wrongly availed cenvat credit. So far as interest on delayed payment of an amount determined in term of Rule 6(3A) of Cenvat Credit Rules, 2004 is concerned, rule 6(3A)(b)(vi)of Cenvat Credit Rules,2004 automatically comes into play and no action as prescribed under 14 of Cenvat Credit Rules,2004 needs to be resorted to. I therefore, observe that the argument of the appellant that they have not utilised the wrongly availed cenvat credit is irrelevant and cannot be accepted. In view of said inbuilt provision i.e. rule 6(3A)(b)(vi) of Cenvat Credit Rules,2004 for payment of interest, the adjudicating authority was right in confirming the interest accrued. Further, the circumstances of the present case reveals that the appellant was already under an obligation to pay interest as a



statutory requirement of the provisions opted and hence their plea that demand of interest was made under 14 rule of Cenvat Credit Rules,2004 and confirming the same under rule 6(3A)(b)(vi) of Cenvat Credit Rules,2004 turn out to be traversing beyond the scope of SCN, does not holds good. In view of the observations above, the impugned order does not require any interference. The grounds advanced by the appellant are not acceptable.

8. In view of the above, the appeal filed by the appellant is rejected.

9. 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.

(Handwritten Signature)
(Gopi Nath)

Commissioner,CGST (Appeals)
Date:



Attested

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

By R.P.A.D.

To,
M/s. Cadila Healthcare Ltd.,
SurveyNo.417-419,420 Sarkhej-Bavla Road,
Village-Moraiya, Taluka-Sanand, Dist-Ahmedabad-382210

Copy to:

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

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