



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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DIN-20211264SW0000666EB8

स्पीड पोस्ट

25/10/2021

- क फाइल संख्या : File No : GAPPL/COM/CEXP/378/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-40/2021-22**
दिनांक Date : **24.11.2021** जारी करने की तारीख Date of Issue : **01.12.2021**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **05/DC/D/2020-21/AKJ** dated **20.05.2020**, passed by the Deputy Commissioner, Central GST & Central Excise, Div-IV, Ahmedabad-North.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- M/s. Dishman Pharmaceuticals and Chemical Ltd.(Now known as M/s. Dishman Carbogen Amcis Ltd.), DTA Unit, 47, Paiki 1, Lodariyal, Bavla sanand Road, Sanand, Ahmedabad.

Respondent- Deputy Commissioner, Central GST & Central Excise, Div-IV, Ahmedabad-North.

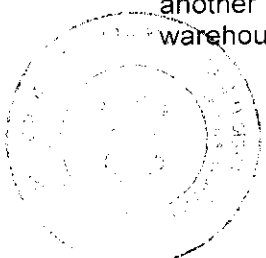
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक 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।
- (i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।
- (ii) 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.



(क) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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।

(c) 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. 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 Appellate 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।

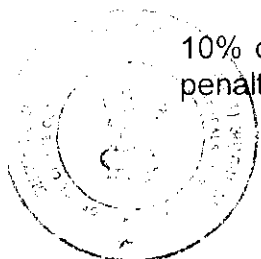
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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।

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."

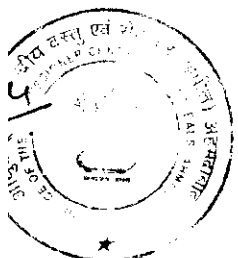


ORDER-IN-APPEAL

1. This order arises out of an appeal filed by M/s. Dishman Pharmaceuticals and Chemicals Ltd. (now known as M/s. Dishman Carbogen Amcis Ltd), DTA Unit, Survey No. 47 Paiki 1, Lodariyal, Bavla Sanand Road, Sanand, Dist-Ahmedabad (hereinafter referred to as '*appellant*') against Order in Original No. 05/DC/D/2020-21/AKJ dated 20.05.2020/22.5.2020 (hereinafter referred to as '*the impugned order*') passed by the Deputy Commissioner, CGST & Central Excise, Division-IV, Ahmedabad-North (hereinafter referred to as '*the adjudicating authority*').

2. Facts of the case, in brief, are that the appellant is engaged in manufacturing of Hand Sanitizer and PP Medicines falling under Chapter Heading No. 38089400, 34022010 and 30049099 of the First Schedule to the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AAACD4164DEM009. The appellant was availing Cenvat Credit of Capital Goods, Inputs and Input Services under Cenvat Credit Rules, 2004. Earlier, M/s. Dishman Pharmaceuticals and Chemicals Ltd. was operating as an EOU, within the same premise, having 10 plants manufacturing Bulk Drugs and Chemicals. Out of the 10 plants, in the month of June 2015, Plant 10 was debonded and exited from 100% EOU status and in the premise of Plant 10, the DTA unit was started. At the time of debonding of plant 10, M/s. Dishman Pharmaceuticals and Chemicals Ltd.(EOU) has cleared machineries and other goods to DTA Unit, on payment of Rs. 55,08,606/- as Central Excise duty thereon in terms of Para 8 of Notification No. 22/2003-CE dated 31.03.2003 and the appellant has taken Cenvat Credit thereof as Capital Goods as per the proviso to Rule 3 of CCR, 2004.

2.1 The audit of the statutory records of the appellant was conducted by the Officers of the CGST, Audit Commissionerate, Ahmedabad for the period from December, 2015 to June, 2017. Subsequently, the appellant was issued a Show Cause Notice No. 49/2019-20 dated 30.5.2019 by the Deputy Commissioner, Circle-VI, CGST Audit, Ahmedabad vide F. NO. VI/1(b)-5/IA/AP-36/C-VI/2018-19 dated 30.05.2019 wherein demand amounting to Rs. 11,55,673/- was raised from them towards 'Wrongly availed Cenvat Credit on Ineligible Capital Goods' under Rule 14 (2) of Cenvat Credit Rules, 2004 read with Section 11A(4) of Central Excise Act, 1944, alongwith interest under Section 11AA of the Central Excise Act, 1944 and the penalty



was also proposed to be imposed upon them under Rule 15 (2) of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944.

2.2 The show cause notice dated 30.05.2019 has been adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority vide the impugned order held, as briefly reproduced here under:

- (i) *The EOU unit of M/s. Dishman Pharmaceuticals and Chemicals Ltd. was debonded and exited from EOU status and the DTA unit was started in the premise of Plant 10. At the time of debonding, the EOU has cleared machineries and other goods to DTA Unit, charging duty of Rs. 55,08,606/- and subsequently, the DTA Unit has taken Capital Goods credit of the same on the strength of invoices issued by EOU. The Audit noticed that, the DTA unit has availed the Cenvat Credit of Rs. 5,62,009/- on the goods like Aluminium Articles, false ceiling, doors and walls which do not fall under the definition of Capital Goods given in Rule 2 of CCR, 2004. Therefore, it appeared that Cenvat Credit taken on aforesaid goods is not admissible to the appellant.*

The appellant vide letter dated 05.12.2018 submitted that the said goods are mandatorily required to be used for setting up the production block for life cycle management of clean room because as the pharmaceutical company, they are required to maintain the standards of Class 100000 area inside the production block and hence such materials are invariably used in the manufacture of pharmaceuticals products. Regarding nature of goods as Capital Goods, they submitted that the said materials are inputs required for processing of the pharmaceutical products without which the manufacture of the goods cannot take place to the extent of the prescribed standards by the pharmaceutical industry.

The submissions given by the appellant are not proper and not correct in as much as, at the time of debonding, the EOU has cleared the goods on payment of duty at depreciated value available to Capital Goods under Notification No. 22/2003-CE. Secondly, the final products manufactured are falling under Chapter 30, 34 and 38 and hence the said goods falling under Chapter 94, 73, 76 etc. cannot be an input for the same. Thirdly, the said goods though used in the manufacturing area, it does

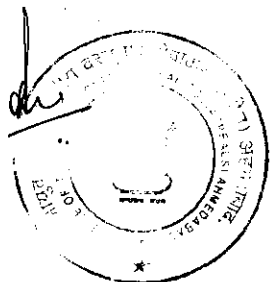


not fall under the definition of Capital Goods given under CCR, 2004 so as to become eligible for Cenvat Credit.

- (ii) The appellant has also availed Cenvat Credit of Rs. 5,93,664/- in respect of the goods viz. Nitrogen Gas Generator, Single Head Liquid Filling Machine and Automatic 8 Head Vertical Air Jet Machine for hard surface disinfectant, which were not used in the factory of manufacture of final products. Hence, Cenvat Credit of Rs. 5,93,664/- taken by the appellant is not admissible and liable to be recovered from them under Rule 14 (2) of Cenvat Credit Rules, 2004 read with Section 11A(4) of Central Excise Act, 1944, alongwith interest under Section 11AA of the Central Excise Act, 1944;
- (iii) Penalty of Rs. 11,55,673/- imposed on the appellant under Rule 15 (2) of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds reproduced below:

- (i) The appellant had converted the EOU Unit into DTA Unit only after taking permission from the Jurisdictional Division and Range Office. At the time of debonding, clearance of Capital Goods and Machineries was made vide Invoice No. 1120150288, 289 and 290 all dated 24.06.2015, on payment of duty leviable thereon. This fact was very well in the knowledge of the Jurisdictional Range and Division Offices of Central Excise department. Further, the Cenvat Credit was availed by the DTA Unit i.e. the appellant, on the basis of the same invoice dated 24.06.2015. Therefore, there is no suppression on the part of the appellant and accordingly, the present demand raised under Section 11A of the Central Excise Act, 1944 invoking the extended period is hit by limitation.
- (ii) As regards the Cenvat Credit availed in respect of Double Skin Walls, Double Doors, False Ceilings etc. falling under CETH No. 9406 of Central Excise Tariff Act, 1985, Rubber-Aluminium Sheet falling under CETH No. 4008, Aluminium Diffuser falling under CETH No. 7616 etc., it is submitted that the said materials are mandatorily required to be used, for setting up the production block for life cycle management of clean room because as a



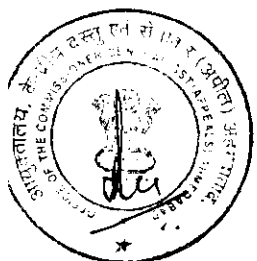
pharmaceutical company, they are required to maintain the standards of class 100000 area inside the production block. Hence, such materials are invariably used in the manufacture of the pharmaceutical products. Therefore, they have correctly taken the credit thereof.

- (iii) *As regards the contention of the department that the said materials are not Capital Goods or Spares or Accessories, it is submitted that the said materials are inputs required for processing of the pharmaceutical products, without which the manufacture of the goods cannot take place to the extent of the prescribed standards by the pharmaceutical industry.*
- (iv) *As regards the goods viz. Nitrogen Gas Generator, Single Head Liquid Filling Machine and Automatic 8 Head Vertical Air Jet Machine for hard surface disinfectant, it is submitted by the appellant that the same were used for keeping the factory and the manufacturing area purely sanitized as it is a mandatory requirement for any pharmaceutical industry. Therefore, they have rightly availed the Cenvat Credit thereon.*

4. The appellant was granted opportunity for personal hearing through video conferencing on 17.09.2021. Shri R. Subramanya, Advocate, appeared for personal hearing as authorised representative of the appellant. He reiterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of hearing. I find that the issues to be decided in the case are as under:

- (a) *Whether the appellant is eligible for Cenvat Credit in respect of Double Skin Walls, Double Doors, False Ceilings etc. falling under CETH No. 9406 of Central Excise Tariff Act, 1985, Rubber-Aluminium Sheet falling under CETH No. 4008, Aluminium Diffuser falling under CETH No. 7616 etc. or otherwise?*
- (b) *Whether the appellant is eligible for Cenvat Credit in respect of Nitrogen Gas Generator, Single Head Liquid Filling Machine and Automatic 8 Head Vertical Air Jet Machine for hard surface disinfectant or otherwise?*
- (c) *Whether the demand is hit by limitation as per the contention of the appellant as mentioned in Para-3 (i) above?*



6. In order to correctly analyze the issue of the eligibility of the items mentioned in above Para-5 (a) for Cenvat Credit, it would be proper to examine the relevant provisions of the Central Excise Law. Accordingly, I find that the 'Capital Goods' is defined as per Rule 2 of the Cenvat Credit Rules, 2004, as reproduced here under:

"RULE 2. Definitions.-In these rules, unless the context otherwise requires, -

(a) "capital goods" means :-

(A) the following goods, namely :-

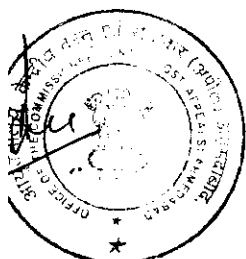
- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under [heading 6804 and wagons of sub-heading 860692]] of the First Schedule to the Excise Tariff Act;*
- (ii) pollution control equipment;*
- (iii) components, spares and accessories of the goods specified at (i) and (ii);*
- (iv) moulds and dies, jigs and fixtures;*
- (v) refractories and refractory materials;*
- (vi) tubes and pipes and fittings thereof; [* * *]*
- (vii) storage tank, [and]*
- [(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers],]*

used -

- (1) in the factory of the manufacturer of the final products, [* * *]; or*
- [(1A) outside the factory of the manufacturer of the final products for generation of electricity [or for pumping of water] for captive use within the factory; or]*
- (2) for providing output service;"*

On going through the above definition of 'Capital Goods', I find that none of the items mentioned in above Para-5 (a) is covered under any of the category of the goods mentioned under the said definition so as to become eligible for Cenvat Credit as Capital Goods thereon.

6.1 Further, as regards the contention of the appellant that the said goods are mandatorily required to be used for setting up the production block for life cycle management of clean room as per the prescribed norms for the pharmaceutical industry, it is observed that as per the Utility Certificate dated 16.01.2019 produced by the appellant, the 'Cleanroom' is a part of infrastructural set up which is of immovable nature and is not any kind of machinery. I also find that Hon'ble CESTAT, Bangalore in case of Craft



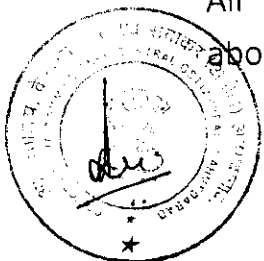
Interiors Ltd. Versus Commissioner of Central Excise, Bangalore reported at [2005 (187) ELT 113 (Tri. Bang.)] also held as under:

"8. The adjudicating authority differentiates between two types of workstations. He has held that the workstations, which are erected at site, do not answer the description of furniture under Chapter 9304 and has held that they are not furniture. He has stated that there are other types of workstation which are called modular furniture which are made in a factory and are readily available in the market. They can be bought and ready to fix. Such workstations are classifiable under 9304. In his findings he has not stated whether the workstation in respect of the appellants is of the first or second kind which he has mentioned. The appellants' contention is that he had included the value of the workstations which in their opinion are formed at site. In view of the adjudicating authorities' finding that such workstations cannot be classified under 9304, we hold that the workstations are not excisable. We agree with the finding of the adjudicating authority in para 74 where he has held that partitions are immovable property permanently fastened to the building and hence not excisable. We agree with the finding the adjudicating authority with regard to partitions. Even though the finding that the flush doors and wooden doors are classifiable under Chapter 44 is correct, the appellant's contention that this finding was beyond the scope of the show cause notice has merits. The show cause notice has classified all the items under Chapter 9304. The adjudicating authority cannot go beyond the scope of the show cause notice. Hence the demand of duty on doors is set aside. The adjudicating authority has rightly held that wall cladding/column cladding, soft board paneling, wall paneling, teak wood shelf, etc. would be immovable property and do not attract levy of central excise duty. Similarly the following items also would be considered as immovable property: Skirting, Raceway, Beading, Frame work above false ceiling, mirror panellings, window sil, grooves, patta."

In view of the above, considering the facts of the present case and the above mentioned judgement, I find that all the items mentioned in Para-5 (a) have been used in the manufacture/creation of an immovable property which is not covered under the category of 'excisable goods'.

6.2 Accordingly, in the present case, I find that the items mentioned in Para-5 (a) would not be covered under eligible category of items either as 'Capital Goods' or even as an 'Input', as contended by the appellant. Hence, the appellant has wrongly availed Cenvat Credit of Rs. 5, 62,009/- on such goods. The contentions made by the appellant are devoid of merit and is liable to be rejected.

7. As regards the issue of Cenvat Credit in respect of Nitrogen Gas Generator, Single Head Liquid Filling Machine and Automatic 8 Head Vertical Air Jet Machine for hard surface disinfectant as mentioned in Para-5 (b) above, it is observed that as per the facts recorded under the impugned



order and particularly under Para-10 of the Show Cause Notice, the appellant themselves via email dated 26.11.2018 submitted that the said items were not used by them in the factory of manufacturer of final products. Accordingly, the said items are not covered under the definition of 'Capital Goods' Rule 2 of the Cenvat Credit Rules, 2004.

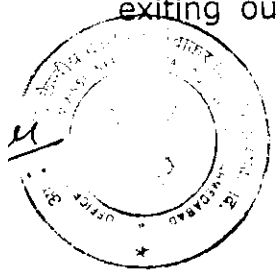
7.1 Further, it is observed that the appellant has contended that the said items as mentioned in Para-5 (b) above were used by them for keeping the factory and the manufacturing area purely sanitized as it is a mandatory requirement for any pharmaceutical industry. Accordingly, they are eligible for Cenvat Credit of Rs. 5,93,664/- taken on the said goods.

7.2 As regards the said contention of the appellant, it is observed that the submission made by them in the appeal memorandum regarding the usage of the said items is contrary to the facts, submitted by them earlier before the adjudicating authority. Further, it is observed that the said submission is not backed by any documentary evidences. I also find that even the said submission of the appellant is accepted, the said items, which are in the nature of the machines which have been used in the activity of cleaning and sanitizing the manufacturing area. However, the appellant has not submitted any suitable explanation in support of their contention for the eligibility of the said goods either as 'Capital Goods' or even as 'Input' for availment of Cenvat Credit thereon. I also find that in the case of Rathi Steel & Power Ltd. [2015 (321) ELT 200 (All.)], the Hon'ble High Court of Judicature at Allahabad held that "*We further find that under Rules, 2004, a burden is cast upon the manufacturer to ensure that Cenvat Credit is correctly claimed by them and proper records are maintained in that regard.*"

7.3 Accordingly, I find that the said items does not get covered under the category of eligible items either as 'Capital Goods' or as 'Input' so as to be become eligible for Cenvat Credit thereon. Hence, the contention of the appellant to the extent of Cenvat Credit of Rs. 5,93,664/- taken on the said goods mentioned in Para-5 (b) above, is not legally sustainable.

8. Further, I find that the appellant has also submitted contention that the demand raised under Section 11A of the Central Excise Act, 1944 invoking the extended period is hit by limitation on the basis of the grounds mentioned in Para-3(i) above.

8.1 As regards the said contention of the appellant, I find that the EOU units are allowed to debond from the Scheme subject to approval of the jurisdictional Development Commissioner, as per the detailed guidelines for exiting out of EOU/EHTP/STP Scheme given in the Appendix 14-I-Lof the



Handbook of Procedures, Vol. I. In the event of debonding, the unit is required to pay applicable customs and excise duty on the imported and indigenous capital goods, raw materials, components, consumables, spares, finished goods, waste & scrap etc. in stock. The unit has to apply for debonding to the jurisdictional Development Commissioner and the unit is also required to obtain clearance from the jurisdictional Central Excise Officers before obtaining final debonding order. The unit is allowed to pay duty on imported and indigenous capital goods on depreciated value at the time of debonding, however, in case of EOU scheme, the 'Capital Goods' is separately defined under Chapter 9 of Foreign Trade Policy. After issuance of 'Final debonding Order', the respective unit get exited from EOU Scheme.

8.2 Accordingly, the process of debonding from EOU scheme is a separate and exhaustive exercise to be executed by the respective unit. In the present case, the duty paid by the appellant (while holding status of EOU unit), while clearing the Capital Goods (as per the definition prescribed under Foreign Trade Policy) and Machineries under Invoice No. 1120150288, 289 and 290 all dated 24.06.2015 was as a part of the de-bonding process.

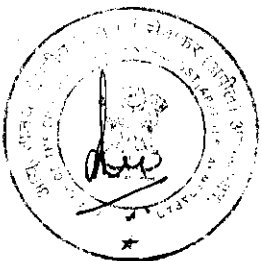
In the present case, it is observed that the dispute is of availment of Cenvat Credit in respect of the 'Capital Goods' availed and utilized by the DTA Unit which are not eligible for Cenvat Credit in terms of the provisions of Cenvat Credit Rules, 2004.

8.3 In the case of Rathi Steel & Power Ltd. [2015 (321) ELT 200 (All.)], the High Court of Judicature at Allahabad held that:

"32. We further find that under Rules, 2004, a burden is cast upon the manufacturer to ensure that Cenvat Credit is correctly claimed by them and proper records are maintained in that regard.

33. The assessee, in response to the show cause notice had stated that there is no provision in Central Excise Law to disclose the details of the credit or to submit the duty paying documents, which in our opinion is false and an attempt to deliberately contravene the provisions of the Act, 1944 and the rules made there under with an intent to evade the duty.

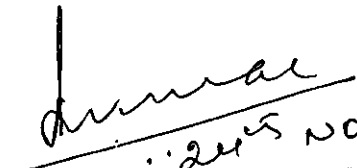
34. In our opinion, the facts of the present case clearly suggest wilful suppression of facts by the assessee as well as contravention of the provisions of the Act and rules framed there under with an intent to evade the demand of duty as would be covered by Clauses IV and V of Section 11A (1) of the Act, 1944. Therefore, the invocation of the extended period of limitation in the facts of the present case is fully justified."



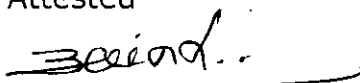
8.4 In the present case, I find that the appellant has nowhere made contention that they have disclosed or submitted the details of the Cenvat Credit taken on the said ineligible Capital Goods or the relevant documents thereof to the Jurisdictional Central Excise Officers either at the time of taking Cenvat Credit thereof or subsequently at any point of time. These facts came into the notice of the department only during the audit conducted by the officers of Audit Commissionerate, Ahmedabad. Accordingly, I find that the contention of the appellant that the demand is hit by limitation on the grounds as mentioned in Para-3(i) above, does not contain any merit and liable to be rejected.

9. On careful consideration of the relevant legal provisions, judicial pronouncements and submission made by the appellant, I do not find any merit in the contention of the appellant against confirmation of the demand of Rs. 11,55,673/- by the adjudicating authority vide the impugned order towards wrongly availed Cenvat Credit, under Section 11A(4) of Central Excise Act, 1944 alongwith Interest under Section 11AA of Central Excise Act, 1944 and Penalty imposed of Rs. 11,55,673/- under Section 11AC of the Central Excise Act, 1944. Accordingly, the impugned order is upheld and appeal filed by the appellant is rejected.

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

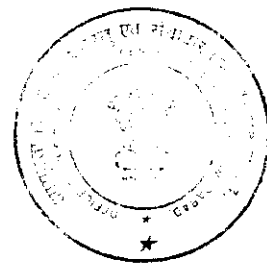

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 24th November, 2021

Attested



(M.P. Sisodiya)

Superintendent (Appeals)
Central Excise, Ahmedabad



By Regd. Post A. D

M/s. Dishman Pharmaceuticals and Chemicals Ltd.
(now known as M/s. Dishman Carbogen Amcis Ltd),
DTA Unit, Survey No. 47 Paiki 1,
Lodariyal, Bavla Sanand Road,
Sanand, Dist-Ahmedabad

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Ahmedabad-North.
3. The Deputy /Asstt. Commissioner, Central GST, Division-IV, Ahmedabad-North.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-North.
5. Guard file
6. PA File

