



आयुक्त का कार्यालय),अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-
Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015
☎ 26305065-079 : टेलिफैक्स 26305136 - 079 :
Email- commrappl1-cexamd@nic.in



DIN-20211264SW0000924760

स्पीड पोस्ट

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क फाइल संख्या : File No : GAPPL/COM/CEXP/379/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-41/2021-22**
दिनांक Date : **29.11.2021** जारी करने की तारीख Date of Issue : **08.12.2021**

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original Nos. **06/DC/D/2020-21/AKJ** dated **29.05.2020**, 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.(100% EOU), 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 :

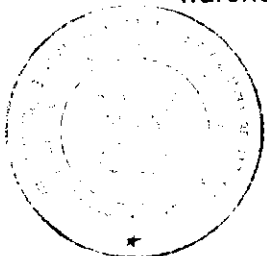
Revision application to Government of India :

(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 मामले 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 पढ़ी 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 तथा 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।

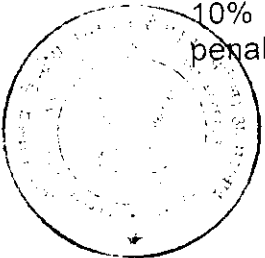
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

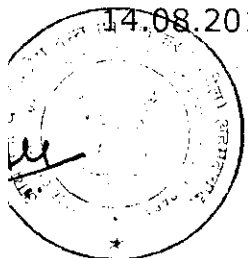


ORDER-IN-APPEAL

1. This order arises out of an appeal filed by M/s. Dishman Pharmaceuticals and Chemicals Ltd.(100% EOU) (now known as M/s. Dishman Carbogen Amcis Ltd., 100% EOU), Survey No. 47 Paiki 1, Lodariyal, Bavla Sanand Road, Sanand, Dist-Ahmedabad (hereinafter referred to as 'appellant') against Order in Original No. 06/DC/D/2020-21/AKJ dated 29.05.2020 (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 Bulk Drugs and Fine Chemicals falling under Chapter 30, 34 and 38 of the First Schedule to the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AAACD4164DXM006. 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 a part of combined EOU unit, 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.(100% EOU) has cleared machineries and other goods to DTA Unit on 'as is, where is' basis, on payment of duty leviable thereon in terms of Para 8 of Notification No. 22/2003-CE dated 31.03.2003.

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 April, 2015 to June, 2017. As per relevant Para 2 of the FAR No. 2090/2018-19 dated 27.06.2019, it was observed by the audit officers that the appellant had determined and paid duty @ 10.30%, i.e., at the rate in force on the date of procurement and not @ 12.5%, i.e., rate in force on the date of debonding/clearance of goods as per Notification No. 22/2003-CE dated 31.3.2003. Hence, they had short paid Central Excise duty amounting to Rs. 12,07,027/- on the clearance of Capital Goods at the time of debonding. Based on the audit observation, the appellant was issued a Show Cause Notice No. 89/2019-20 dated 14.8.2019 by the Deputy Commissioner, CGST Audit, Ahmedabad vide F. NO. VI/1(b)-80/AP-39/Cir-VI/2017-18 dated 14.08.2019 wherein demand of Central Excise duty amounting to



Rs. 12,07,027/- was raised from them towards 'Short payment of duty on Capital Goods at the time of debonding in violation of provisions of the Notification No. 22/2003-CE dated 31.3.2003, under the provisions of Section 11A 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 Section 11AC (1)(a) of Central Excise Act, 1944.

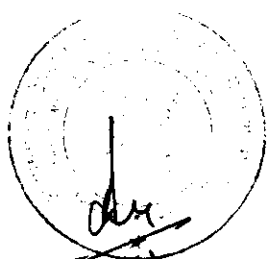
2.2 The show cause notice dated 14.08.2019 has been adjudicated by the adjudicating authority vide the impugned order, wherein he has passed order as per details given below:

- (i) *He confirmed the demand of Rs. 12,07,027/ and ordered its recovery from the appellant under Section 11A of the Central Excise Act, 1944 alongwith interest under Section 11AA of the Central Excise Act, 1944;*
- (ii) *Since, the condition of Notification No. 22/2003-CE dated 31.03.2003 is not fulfilled, any demand notice will not be subjected to any limitation of time and therefore, B-17 bond can be enforced to recover short paid duty from the appellant and he is also liable to Penalty under Section 11AC(1)(a) of the Central Excise Act, 1944;*
- (iii) *He imposed a Penalty of Rs. 1,20,703/- on the appellant under Section 11AC(1)(a) of Central Excise Act, 1944.*

3. Being aggrieved with the impugned order, the appellant has preferred this appeal on the grounds which are given below:

- (i) ***The demands are time barred:***

During the process of debonding, the clearances of Capital Goods and Machinerics were made/effectd vide Invoice No. 1120150288, 289 and 290 all dated 24.06.2015, on payment of duty thereon. This fact was very well in the knowledge of the Jurisdictional Range and Division Offices of Central Excise department. Also, the appellant had paid an amount of differential duties through Cenvat Credit on depreciated value, as per the Hon'ble High Court's Order dated 30.10.2015, wherein the department was the respondent. Thereafter, the Assistant Commissioner has issued No Dues and No Objection Certificate vide letter dated 03.12.2015 to the appellant. Accordingly, there



is no suppression or collusion on the part of the appellant. Accordingly, demand issued under Section 11A of the Central Excise Act, 1944 is time barred and is hit by limitation.

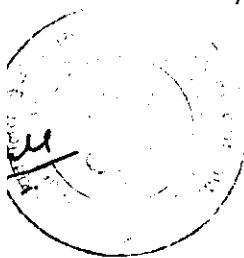
- (ii) *During the course of debonding, they had requested the Jurisdictional Deputy Commissioner of Central Excise for issuing a 'No Due Certificate', to submit the same to the EOU authorities at KANDLA SEZ. The Deputy Commissioner vide letter dated 19.08.2015 directed the appellant to pay the entire amounts in cash, without using the Cenvat Credit in balance. Being aggrieved, the appellant filed SCA No. 14949 of 2015 in the High Court and Hon'ble High Court vide Order dated 30.10.2015 has passed following directions:*

"7. In the light of the above discussion, the court is of the view that the matter requires consideration. Hence, issue rule returnable on 17th December, 2015. By way of interim relief, subject to the final outcome of the petition, the petitioners are permitted to pay the excise duty foregone from the legally availed Cenvat Credit account. Upon the excise duty being paid through the Cenvat Credit account, the second respondent shall issue "No Due Certificate" to the petitioners for debonding out of 100% EOU Scheme".

The appellant, based on the directions of the Hon'ble High Court of Gujarat, had made the payment of the duty foregone through Cenvat Credit account, on the depreciated value. Therefore, the amounts paid by them were correctly made and there is no ambiguity in the same. Accordingly, the differential amounts worked out in the impugned order, is incorrect, erroneous and is liable to be set aside.

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:

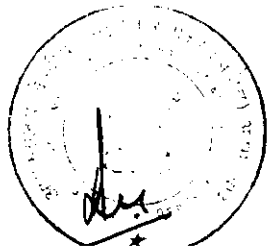
- (a) *Whether the demand confirmed of Rs. 12,07,027/- by the adjudicating authority towards short payment of duty in respect of the Capital Goods cleared during the course of debonding, under Section 11A of the Central Excise Act, 1944 alongwith interest under Section 11AA of the Central Excise Act, 1944 and penalty imposed under Section 11AC of the Central Excise Act, 1944 is legally sustainable on merits or otherwise?*
- (b) *Whether the demand is hit by limitation on the grounds, as per the contention of the appellant mentioned in Para-3(i) above or otherwise?*

6. It is observed from the case records that the demand has been raised and confirmed vide the impugned order on the basis that the appellant has paid duty on the clearance of duty free procured Capital Goods at the time of debonding @10.3% (i.e. at the rate in force on the date of procurement), whereas as per the condition at Sr.No. 8 of the Notification No. 22/2003-CE dated 31.03.2003, the appellant should have paid the duty on Capital Goods @ 12.5% (i.e. the rate in force on the date of debonding/clearance of goods). Accordingly, it has resulted into short payment of Rs. 12,07,027/- by the appellant.

6.1 The relevant condition at Sr.No. 8 of the Notification No. 22/2003-Central Excise dated 31.03.2003 are reproduced below:

"8. Without prejudice to any other provision contained in this notification, the said officer may, subject to such conditions and limitation as he may deem fit to impose under the circumstances of the case for the proper safeguard of the revenue interest and also subject to such permission of the Development Commissioner or the Board of Approval or the Inter Ministerial Standing Committee as the case may be, where it is exclusively required under Export and Import Policy, allow the user industry to clear any of goods for being taken outside the premises of such user industry to any other place in India, as the case may be, in accordance with the Export and Import Policy -

- (i) such clearance of capital goods may be allowed on payment of an amount equal to the excise duty leviable **on such goods on either on the depreciated value thereof and at the rate in force on the date of payment of such duty or on the transaction value, whichever is higher.** The depreciation shall be allowed at the rate of 20% per annum of the original value in respect of computer and computer peripherals items and 10% per annum in case of other capital goods;"

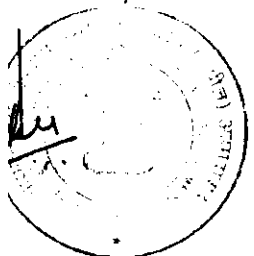


It is apparent from the legal provisions contained in the notification supra that the appellant was required to pay duty on the depreciated value of Capital Goods and at the rate in force on the date of payment of such duty or on the transaction value. It is apparent from SCN that the duty was paid on depreciated value and hence the applicable rate of duty to be paid was at the rate applicable on the date of payment of duty. Hence, the appellant has short paid duty amounting to Rs. 12,07,027/- while making clearance of Capital Goods at the time of debonding. Hence, I find that the demand made in the SCN is legally sustainable on merits.

7. Further, it is observed that the appellant has also made contention that the demand in the present case is hit by the grounds of limitation and is accordingly time barred. In this regard, I find that as per the relevant Para-8 readwith Condition no. 4 of Para-1 of Notification No. 22/2003-Central Excise dated 31.03.2003, the Jurisdictional Deputy/Assistant Commissioner of Central Excise is the proper authority to allow such clearances on payment of applicable duties mentioned therein. In the present case, it is observed that there is no such dispute raised at any point of time that such clearances have been made by the appellant without proper permission of the Deputy/Assistant Commissioner of Central Excise as mentioned above.

7.1 In the present case, I also find that a 'No Dues and No Objection Certificate for debonding' has also been issued by the Assistant Commissioner, Division-IV, Ahmedabad-II vide F.No. VIII/48-08/Cus/Dishman/13-14 dated 03.12.2015. It is also observed that a specific remark/note was made in the said certificate that "*This 'No dues and No Objection Certificate' is being issued as per the direction of Hon'ble High Court of Gujarat in its order dated 30.10.2015 in SCA No. 14949 of 2015 wherein interim relief has been ordered and second respondent i.e. the undersigned has been directed to issue 'No due Certificate' subject to the final outcome of the petition.*"

7.2 I also find that the appellant has raised this contention at the time of audit also and the same is incorporated in the relevant Para 2 of FAR as well as in SCN. As regards the said contention of the appellant, the SCN issuing authority has contended in the Show Cause Notice that "*the appellant has contravened the provisions of Notification No. 22/2003-CE in General Exemption No. 23 in as much as they had not paid appropriate duty on Capital Goods at the time of debonding. In the said scenario, since the*

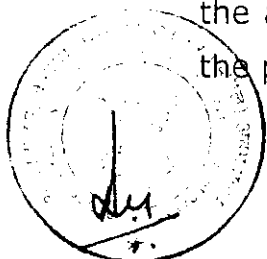


condition of Notification is not fulfilled, any demand notice will not be subject to any limitation of time and therefore B-17 Bond can be enforced for recovery of short paid duty and also relied on the Judgment in case of Bombay Hospital Trust Versus Commissioner of Customs, Sahar, Mumbai [2005 (188) ELT 374 (Tri. LB)]". Further, the adjudicating authority has also, relying on the said Judgment of Hon'ble Tribunal, held that "Since the condition of Notification No. 22/2003-CE dated 01.03.2003 is not fulfilled, any demand notice will not be subject to any limitation of time and therefore B-17 bond can be enforced to recover short paid duty".

7.3 As regards the said contention, I find that in the case of abovementioned judgment of Hon'ble Tribunal, the issue involved was of violation of the two post-import conditions by the importer relating to (i) giving free treatment to 40% of the outdoor patients and (ii) keeping 10% of the total beds free for patients with family income less than Rs. 500/-, of the respective Notification No. 64/88 under which exemption of Customs Duty was availed at the time of import, subject to fulfillment of said conditions of the nature of continuous obligation. The demand in the said case was raised for the recovery of such Customs Duty (for which full exemption availed at the time of import) for non-fulfillment of the said post import conditions of the said Notification.

Whereas, in the present case, I find that the demand raised against the appellant is not for the recovery of the excise duty in respect of the exemption availed at the time of procurement under the Notification No. 22/2003-CE dated 31.03.2003. The demand in the present case is for recovery of Central Excise duty short paid in respect of the Capital Goods cleared at the time of debonding, as per the condition at Sr.No. 8 of the Notification No. 22/2003-CE dated 31.03.2003, as allowed by the Jurisdictional Deputy/Assistant Commissioner and subsequently, 'No Dues and No Objection Certificate' has also been issued to the appellant vide letter F.No. VIII/48-08/Cus/Dishman/13-14 dated 03.12.2015.

In view of the above, I find that the facts of the present case are different than the case relied upon by the adjudicating authority. Hence, the abovementioned judgment cannot be made applicable to the present case. Further, I also find that the adjudicating authority has nowhere made any charges against the appellant or produced any such grounds showing any 'Fraud, collusion, wilful mis-statement or suppression of facts' committed by the appellant with an intent to evade payment of duty. Hence, I find that in the present case the invocation of extended period is not legally sustainable.



7.4 I also find that the demand in the present case has not been issued within a period of 24 months in terms of Section 11A of the Central Excise Act, 1944. Hence, the entire demand raised in the present case which has been subsequently confirmed by the adjudicating authority vide the impugned order is hit by limitation. Accordingly, I find that the impugned order passed by the adjudicating authority is not sustainable on the grounds of limitation and is liable to be set aside. Further, when the demand of duty is set aside, the question of interest and penalty does not arise.

8. In view of the above, I set aside the impugned order passed by the adjudicating authority and allow the appeal filed by the appellant.

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

Akhilesh Kumar
 29 November, 2021
 (Akhilesh Kumar)
 Commissioner (Appeals)

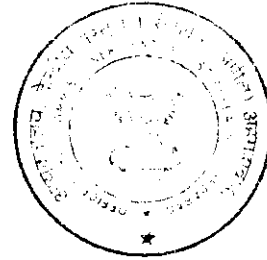
Date: 29/November/2021

Attested

M.P. Sisodiya

(M.P. Sisodiya)

Superintendent (Appeals)
 Central Excise, Ahmedabad



By Regd. Post A. D

M/s. Dishman Pharmaceuticals and Chemicals Ltd.(100% EOU)
 (now known as M/s. Dishman Carbogen Amcis Ltd, (100% EOU)),
 Survey No. 47 Paiki 1,
 Lodariyal, Bavla Sanand Road,
 Sanand, Dist-Ahmedabad-382220

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