



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/263/2023 / ५५५७-५५५५
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-317/23-24 dated 28.03.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	08.04.2024
(ङ)	Arising out of Order-In-Original No. 55/AC/D/2022-23/AM dated 23.3.2023 passed by The Assistant Commissioner, CGST Division-IV, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Dishman Carbogen Amcis Ltd. (earlier known as M/s. Dishman Pharmaceuticals & Chemicals Ltd.) S. No. 47/1, Village: Lodariyal Tal: Sanand, Dist: Ahmedabad - 382220

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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।

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 के लिए माल के उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



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।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

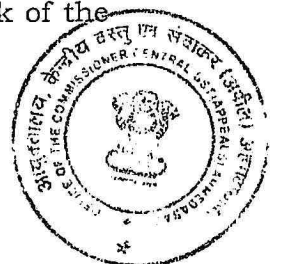
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद 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।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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 हैं।

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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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 conderded in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6) (i) 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

M/s. Dishman Carbogen Amcis Ltd., (earlier Dishman Pharmaceuticals & Chemicals Ltd), S.No. 47/1, Lodariyal, Sanand, Ahmedabad -382220 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No.55/AC/D/2022-23 dated 23.03.2023 (referred in short as '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-IV, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*').

2. The appellant is engaged in the manufacture of Bulk Drugs and Fine Chemicals falling under chapter 30, 34 and 38 of the first schedule to the Central Excise Tariff Act, 1985. They were having Central Excise Registration No. AAACD4164DXM0C6. The appellant had availed Cenvat credit on inputs, input services and capital goods, and they have also procured goods, under CT-3 from DTA, and also imported under Procurement Certificate, without payment of central excise/customs duty. They procured both indigeneous and imported raw materials and capital goods, duty free availing the benefits of Notification No.22/2003-CE and Notification No. 52/2003-Cus for maintaining and packaging of articles for export.

2.1 A fire accident occurred at the manufacturing premises of the appellant on 07.03.2017 at 07.15 P.M. This incident was reported to the Deputy Commissioner with copy to Range Superintendent vide letter dated 08.03.2017. The jurisdictional Range Superintendent had drawn a panchnama dated 10.03.2017 in the presence of two independent witnesses and Shri Rajesh Rathod, Authorized person of the appellant, and recorded the loss of the stock of raw-materials, semi-finished/finished goods and capital goods present in the factory premises due to fire accident. The appellant vide letter dated 04.05.2017 submitted an application to the Deputy Commissioner of Central Excise, Division-IV, Ahmedabad - II (Now Division-IV, Ahmedabad - North), alongwith the data of goods lost/destroyed in fire containing the description, quantity, value, duty involved, or procured under CT-3 or imported under PC (procurement certificate), seeking remission of duty. Such goods included inputs which were issued for manufacture and were lying at various stages of production process, including inputs contained in semi-finished/intermediate goods. The inputs lost in fire accident also consisted of imported inputs and indigeneous inputs procured without payment of duty under the provisions of Notification No. 53/2003-CE and No. 22/2003-Cus respectively and some quantity was of duty paid indigeneous inputs. It further appeared that the appellant had availed and utilized Cenvat credit towards the duty paid on the inputs lost in the fire accident. The duty foregone on the inputs procured duty free under the provisions of the said notifications which are lost in the fire accident and the Cenvat credit availed and utilized on the inputs lost in the fire accident are given below which was submitted alongwith the remission application. The remission application involved Customs duty and Central excise duty, details are given below:

Sr.No.	Particulars	Value of Goods (as per excise records) in Rs.	Duty Involved
I	Duty free imports against procurement certificate	2,94,28,264/-	76,09,344/- Customs duty



II	Domestic purchase against CT-3 form	3,26,33,312/-	39,23,874/-
III	Duty paid domestic purchases	6,11,103/-	97,193/-
	Total	6,26,72,679/-	1,16,30,411/-

2.2 It appeared that the appellant had failed to fulfil the conditions laid down under B-17 Bond as the goods lost in fire were not used for the intended purpose i.e. for manufacture of articles for exports hence they were liable to pay duty involved on such inputs which were lost in fire. The CENVAT credit availed on such inputs were also required to be reversed. Thus, it appeared that the appellant was required to pay excise duty involved in the duty free inputs, semi-finished/finished goods lost in fire, with interest.

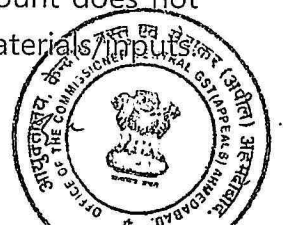
2.3 A SCN No. IV/16-04/MP/2019-20 dated 01.05.2019 was issued to the appellant proposing to recover central excise duty of Rs.40,21,067/- (Rs.39,23,874/- + Rs.97,193/-) alongwith interest in terms of Section 11A(1)/11A(4) of the CEA, 1944 by irvoking extended period. Penalty under Section 11AC(1)(c) of the CEA, 1944 and Rules 15(2) of the CCR, 2004 was also proposed.

2.4 Another SCN No. IV/16-04/MP/2019-20 dated 28.10.2022, proposing rejection of application seeking remission of central excise/customs duty of Rs.1,16,30,411/- under Rule 21 of the CER, 2002 was issued by the Commissioner. This SCN was adjudicated vide OIO No.AHM-EXCUS-002-COMMR-38/2022-23 dated 07.02.2023, wherein the application seeking remission was rejected.

3. Subsequently, the SCN dated 01.05.2019 was adjudicated vide impugned order wherein the demand of Rs.40,21,067/- alongwith interest and penalty was confirmed u/s 11A(4), 11AA & 11AC respectively.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below;

- The appellant had submitted vide letter dated 15-12-2021 that the insurance claim amount does not include the duty element of Rs.1,16,30,411/- on any of the raw material/inputs, alongwith CA certificate showing the breakup of the entire amount taken for sanctioning the insurance claim. The Appellant had also submitted a letter dated 4-1-2022 issued by the insurance surveyors namely M/s. Bhatwadekar Insurance Surveyors & Loss Assessors Pvt Ltd, Mumbai wherein the Surveyors have clearly mentioned at
 - Point No. (a) On the matter of inclusion of Central Excise & Customs duty component, kindly note that the insured's (Dishman) claim was net off excise. The purchase bills, have been verified and are against the CT-3 Form, Hence, no excise is included in our assessment. Therefore, there remains no doubt that the insurance claim was free of any excise or customs duties, and the insurance claim sanctioned.
- The appellant had claimed the loss from the insurance company, and as per the final survey report dated 1-2-2019, the total amount claimed was Rs.29,80,92,419/- and the amount sanctioned was Rs.10,24,41,780/-. The claim amount does not include the duty element on any of the capital goods or the raw materials/inputs



The value of the stocks have been taken from the books of accounts as recorded. The survey report also shows that the compensation assessed is only 50% of the claim amount. The copy of final survey report was submitted vide letter dated 2-6-2021 to the Range Superintendent, showing the details of the amount taken for sanctioning the insurance claim, and where the excise duty (or customs or service tax) is not considered.

- The appellant had taken utmost care to safe-guard the raw materials, goods in work-in-process and the finished goods, from fire accidents, and have various equipments installed, in the premises, with regular maintenance, and trained staff posted at the factory. The appellant being a pharmaceuticals company, have to take all the necessary precautions, before they get the licence to manufacture. The appellant submits that they had installed the following equipment for the safety of the factory, as certified by the fire safety agency M/s. Gujarat Industrial Safety & Health Services, Ahmedabad vide certificate dated 15-3-2017.
- As regards, the remission application of goods imported against procurement certificate and procured from DTA under CT-3, the same are procured without payment of customs or excise duties. For such materials the remission is claimed for the amount of duty foregone.
- As regards, the duty paid inputs, the amount of Cenvat credit taken was of Rs.97,193/-. The same is reversed vide DRC- 03 dated 22-12-2022 for Rs.97,193/- Debit Entry No. DI2412220409815. The copy of the DRC-03 is attached herewith for kind consideration. Hence, the requirement of reversal of Cenvat credit is also satisfied.
- The demand of central excise duty on the raw materials procured under CT-3 without payment of duty, and got destroyed in fire accident cannot be demanded, as the said raw materials, got destroyed in the fire accident within the factory of the EOU. The fact of fire accident was also informed to the Central Excise Authorities, immediately, and the details of the goods destroyed in fire was also submitted to the Central Excise Authorities. Since the demand is confirmed under Notification no. 22/2003-CE, it is pertinent to refer to para 3 of the said notification, which states that there cannot be any central excise duty demand from the appellant as the goods got destroyed in an uncontrollable fire accident, which was intimated to the Central Excise Authorities in time. The appellant-EOU is governed by the jurisdictional Central Excise Authorities, and they had made all the efforts to inform the Central Excise Department and a panchanama of the accident premises, was also prepared, by the Superintendent of Central Excise immediately after the fire accident. Therefore, in view of the aforesaid para 3, the benefit of this provision should have been extended to the appellant.
- The penalty equal to central excise duty is imposed under Section 11AC (1) (c) invoking suppression, fraud and collusion, on the appellant. The appellant submits in this regard, that the demand is on the goods procured duty free from the DTA under CT-3 which is all recorded properly on record, and the said goods got destroyed in a fire accident which is also informed to the central excise department.



fire department, Police, Forensic department, Nagarpalika, and all the departments have confirmed the fire accident as uncontrollable and unavoidable. Therefore, the appellant cannot be alleged to have been suppressed any information or committed any fraud, just because there was some duty free goods lying in the EOU, which got destroyed in the fire accident. Since there is no such fraud or suppression or any contravention of the Act or Rules, of Central Excise, the penalty under Section 11 AC (1) (c) is not at all sustainable and is liable to be set aside. Since no duty is payable and no penalty is payable, the enforcement of bond B-17, is also not required, and such an order of enforcement of the B-17 Bond may also be set aside. They placed reliance on various case laws.

5. The personal hearing in the matter was held on 06.02.2024 in virtual mode. Shri R. Subramanya, Advocate appeared online on behalf of the appellant. He stated that in consequent to the rejection of remission application, they have filed an Appeal No. E/10527/2023 before Hon'ble CESTAT Ahmedabad, which is pending. He prayed to keep this appeal in abeyance till Hon'ble CESTAT Ahmedabad decides the Appeal no. E/10527/2023.

6. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, oral submissions made during personal hearing, the impugned order passed by the adjudicating authority and other case records. The issue before me for decision in the present appeal is whether the demand of service tax amounting to **Rs.40,21,067/-** confirmed alongwith interest and penalty vide the impugned order passed by the adjudicating authority in the facts and circumstances of the case is legal and proper or otherwise.

6.1 The appellant has requested to keep the present appeal in abeyance as the OIO No.AHM-EXCUS-002-COMMR-38/2022-23 dated 07.02.2023, rejecting their remission application has been appealed by them before Hon'ble CESTAT, Ahmedabad vide Appeal no. E/10527/2023. It is observed that the said OIO dated 07.02.2023 was regarding rejection of remission application and the impugned order is in consequent to the duty demand arising out of such rejection.

6.2 In terms of CBIC Circular No. 162/73/95-CX dated 14/12/95, a case shall be transferred to call book if they fall under any of the categories specified therein. I find that the appellant has filed an appeal against an OIO passed by the jurisdictional Commissioner. Since such appeal does not fit in any of the criterion specified in the Board's Circular, I find that the instant appeal cannot be transferred to call book. Further, I find that there is nothing on record to show that the order of the Commissioner rejecting the remission application is stayed by the Hon'ble CESTAT. Therefore, I cannot keep the appeal in abeyance. Accordingly, I take up the matter to decide the appeal on merits.

6.3 I find that the Commissioner vide OIO dated 07.02.2023, rejected the remission application on the grounds that the appellant;

- a) could not submit any satisfactory reply/ explanation/ clarification for reconciling the difference in the value of goods for which remission of Duty has been claimed.



and the value of stock for which insurance amount has been claimed by the appellant and the value of goods lost in process as mentioned in the Certificate of Chartered Accountant, submitted by them;

- b) they themselves had provided two contradictory reports on the matter of precaution taken by them to safeguard goods through proper fire safety equipment and therefore, there is no concrete/tangible way to ascertain, as to whether the fire safety equipment were indeed operational at the time of fire accident or not;
- c) they have not submitted the particulars of goods saved or salvaged and how the same were disposed of;
- d) they have provided false information that claim amount does not include Customs Duty or Excise Duty or Service Tax as during verification it was found that value of domestic purchases of goods involved in the claim is inclusive of Central Excise Duty;
- e) It was evident from the Forensic Science Laboratory's report dated 08.08.2018 that the HBC Fuse was in working condition and there were no evidences of short circuit in the factory the fire was not caused naturally, but was an avoidable accident and hence, cannot be termed as an accident. It is stated in this Order-in-Original that it is obligatory on the part of the appellant claiming remission of Duty on excisable goods, to take proper precautions to avoid possible loss/ damage of the goods, which is not proven in the present case; that the fire accident would not have occurred if proper care had been taken by the appellant; that it is obligatory on the part of the manufacturer to take adequate precautions to avoid damage or loss of goods. Had they taken utmost care, damage/loss could have been avoided by them.

6.4 In consequent to the rejection of remission application, the central excise /customs duty and Cenvat credit involved in such goods was demanded and the same was confirmed vide the impugned order. In the impugned order, the adjudicating authority observed that the appellant has procured domestically and imported the raw materials without payment of Customs duty/ Central Excise duty under the provisions of Notification No. 22/2003-CE dated 13.03.2003 and Notification No. 53/2003-Cus dated 31.03.2003, under B-17 Bond for manufacturing of goods meant for export. The raw materials, procured or imported by them were destroyed in fire and were not utilized for the intended purpose. As per Condition No. 10 laid down in B-17 Bond, the appellant have undertaken to fulfill the conditions stipulated in the Customs/Central Excise notifications as amended under which the specified goods have been sourced and to pay on demand an amount equivalent to the Central Excise/Customs duties leviable on 'the goods as not proved to have been used in the manufacture of articles for export. Both the notifications and B-17 Bond have a binding effect on the appellant along with its conditions. He also observed that as per explanation given to Rule 7 of the Central Excise (Removal of goods at concessional rate of duty for manufacture of Excisable Goods) Rules, 2016 (as amended) the goods shall be deemed not to have been used for the intended purpose even if any of the quantity of the subject goods is lost or destroyed by the natural causes or by unavoidable accidents during the transport from the place of procurement to the manufacturer's premises or during handling or storage in the manufacturer's premises.

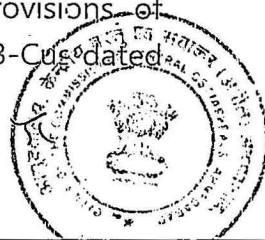


6.5 The adjudicating authority observed that as the goods lost in fire accident were not used for the intended purpose, the appellant has violated the provisions of both the said notifications and the condition of B-17 Bond. Therefore, the adjudicating authority held that the appellant is required to pay the duty involved on such inputs which were lost in fire. The adjudicating authority held that the goods lost in fire are includible under the category of goods not utilized for the intended purpose by the EOU; that the incident was an avoidable incidence and hence, cannot be termed as an unavoidable accident. It was obligatory on the part of the appellant to take proper precautions to avoid possible loss/ damage of the goods. The inputs lost in fire on which Cenvat Credit has been availed were not used in or in relation to the manufacture of the final product, hence the provisions of Cenvat Credit Rules 2004 are violated and therefore, it was held that the appellant is required to reversed/pay the Cenvat Credit involved on the inputs lost in fire.

6.6 I find that the entire demand has been confirmed on the grounds that the appellant has not utilized the goods procured duty free/duty paid for the intended purpose. I find that the appellant has been procuring both indigenous and imported raw materials and capital goods, duty free by availing the benefits, of Notification No. 22/2003-C.Ex., and Notification No. 52/2003-Cus for manufacturing and packaging of articles for export. Notification No. 22/2003-C.Ex and Notification No. 52/2003- Cus allow the duty free procurement and import of capital goods and raw materials on condition that the capital goods procured duty free should be used in the manufacture of final products which are to be exported and the raw materials procured should be used in the manufacture of final goods to be exported. They also procured indigenously duty paid inputs and availed and utilized Cenvat credit of duty paid on such inputs. In terms of Cenvat credit Rules, 2004, credit on inputs can be availed if it is used in or in relation to the manufacture of final product.

6.7 In the instant case all the goods (capital/inputs) procured duty free and (semi-finished /finished goods) manufactured out of such inputs have been destroyed in fire. Thus, there was contravention of the provisions of Notification No. 22/2003-CE dated 13.03.2003 and violation of the conditions of B-17 Bond. Also the duty paid inputs procured indigenously on which cenvat credit was availed could not be used in duty paid finished goods as they got destroyed. I, therefore, find that the appellant shall be liable to pay central excise duty amounting to Rs.39,23,874/- involved in the goods procured duty free under the provision of Notification No. 22/2003-C.Ex., and Notification No. 52/2003-Cus which got destroyed and also liable to reverse the CENVAT credit amounting to Rs.97,193/- of the duty paid goods procured indigenously and which got lost in fire. Accordingly, I uphold the total demand of **Rs.40,21,067/-** confirmed alongwith interest.

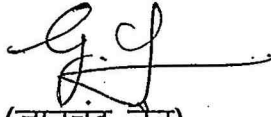
7. As regards the penalty under Section 11AC of the CEA,1944, I find that the appellant deliberately did not mention in their ER-2 Returns, the details of goods lost/destroyed in the fire incident occurred in their unit on 07.03.2017. They also failed to mention the goods lost/destroyed in the fire in the remark column of the ER-2 Return filed by them for the month of March, 2017 and subsequent Returns. There was a deliberate attempt on the part of the appellant to contravene the provisions of Notification No. 22/2003-CE dated 31.03.2003 and Notification No. 53/2003-Cus dated



31.03.2003, in as much as they have not utilized the goods procured under duty free for the intended purpose as well as the conditions of B- 17 Bond. They also failed to reverse the wrongly availed Cenvat Credit on the goods procured by them on payment of duty. Thus, I find that the penalty is also imposable on them.


8. In view of the above, I uphold the impugned order confirming the duty, interest and penalty.

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.


(ज्ञानचंद जैन)
आयुक्त(अपील्स)

Date: 28.3.2024

Attested


अधीक्षक (अपील्स)
केंद्रीय जी. एस. टी, अहमदाबाद



By RPAD/SPEED POST

To,
M/s. Dishman Carbogen Amcis Ltd.,
S.No. 47/1, Lodariyal, Sanand,
Ahmedabad -382220

Appellant

The Assistant Commissioner
CGST, Division-IV,
Ahmedabad North

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad.
(For uploading the OIA)
4. Guard File.