आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in

सत्यमेव जयते

By SPEED POST

DIN:- 20240564SW000000D3E8

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/66-70/2024 4885-89
(ख)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-EXCUS-002-APP-14 to 18/2024-25 dated 29.04.2024
(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	02.05.2024
(ङ)	Arising out of Order-In-Original No. 06/AC/Dem/NA/2023-24, 07/AC/Dem/NA/2023-24, 08/AC/Dem/NA/2023-24, 09/AC/Dem/NA/2023-24 and 11/AC/Dem/NA/2023-24 All dated 30.6.2023 passed by The Assistant Commissioner, CGST Division-V, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Amneal Pharmaceuticals Pvt. Ltd. Plot No. 882/1-871, Nr. Hotel Kankavati Vill. Rajoda, Bavla Ahmedabad

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 पूवोक्त 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 मे हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम होतो रूपये 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. Registar 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 ओदश 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 संषोधित 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 in 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) 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 राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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. Amneal Pharmaceuticals Pvt. Ltd.(100% EOU), Plot No. 882/1-871, Nr. Hotel Kankavati, Village-Rajoda, Bavla, Ahmedabad--382220 (hereinafter referred to as *'the appellant'*) have filed following appeals against the Order-in-Originals (listed below) passed by the Assistant Commissioner, Central GST, Division-V, Ahmedabad North (hereinafter referred to as *'the adjudicating authority'*). The appellant were holding C.EX Registration No. AAGCA0781KXM001 and Service Tax Registration No. AAGCA0781KST001.

Table-A

Sr.No.	Appeal No.	SCN No. Date	OIO No.& Date	Period of Dispute	Amount Involved
A	B	C	D	E	F
01	GAPPL/COM/CEXP/70/2024	V.30/15-77/OA/2015 dated 30.06.2015 **Earlier** OIO 10/Ref/2014 dtd 6.1.2015	08/AC/Dem/NA/2023-24 dated 30.06.2023 **Referred to as Impugned Order –1**	July,2013 to September-2013	Rs.71,998/-
02	GAPPL/COM/CEXP/67/2024	V.30/15-76/OA/2015 dated 22.12.2015 **Earlier** OIO 9/Ref/2014 dtd 30.12.2014	07/AC/Dem/NA/2023-24 dated 30.06.2023 **Referred to as Impugned Order –2**	Oct,2013 to Dec-2013	Rs.3,114/-
03	GAPPL/COM/CEXP/68/2024	V.30/15-75/OA/2015 dated 22.12.2015 **Earlier** OIO 11/Ref/2014 dtd 06.01.2015	06/AC/Dem/NA/2023-24 dated 30.06.2023 **Referred to as Impugned Order –3**	Jan,2014 to March-2014	Rs.17,79,286/-
04	GAPPL/COM/CEXP/66/2024	V.30/15-03/OA/2016 dated 09.06.2016 **Earlier** OIO 09/Ref/2015-16 dtd 22.06.2015	09/AC/Dem/NA/2023-24 dated 30.06.2023 **Referred to as Impugned Order –4**	July,2014 to Sept, 2014	Rs.22,75,877/-
05	GAPPL/COM/CEXP/69/2024	V.30/15-21/V/2016 dated 4.11.2015 **Earlier** OIO 11/Ref/2015-16 dtd 22.06.2015	11/AC/Dem/NA/2023-24 dated 30.06.2023 **Referred to as Impugned Order –5**	Jan,2015 to March-2015	Rs.24,99,996/-

2.1 Briefly stated the facts of the case are that the appellant had filed various claims seeking refund of unutilized Cenvat Credit balance of duty paid on input or tax paid on input services used in the manufacture of their final pharmaceuticals products falling under Chapter 30 of CETA 1985. The finished goods were cleared for export under the bond during the quarter mentioned at (column-E) of Table-A above and the claim was filed under the provisions of Rule 5 of Cenvat Credit Rules. 2004 read with Notification No. 27/2012-CENT) dated 18.06.2012.

2.2 The claims pertaining to the quarter ***(July, 2013 to September,2013; Oct,2013 to Dec-2013 and Jan,2014 to March, 2014),*** were initially sanctioned by the then Assistant Commissioner of erstwhile Central Excise, Division-III, Ahmedabad-II, vide various OIOs under the provisions of Section 11B of the Central Excise Act, 1944 made applicable vide

Section 83 of the Finance Act, 1994 read with Notification No 41/2012- Service Tax, dated 29.06.2012.

2.3 It was however observed that the Notification No. 5/2006-CE, dated 14.03.2006 *(superseded by Notification No. 27/2012-CE (NT), dated 18.06.2012)* is governed under Rule 5 of CCR, 2004 and is related to the refund of Central Excise duty/ service tax on inputs and input services used in the export of goods, where, the appellant is not in a position to utilize the Cenvat Credit and such Cenvat Credit are to be refunded. Whereas, the refund under the Notification No. 41/2012-ST, dated 29.06.2012 is related to the refund of Service tax paid on the specified services used beyond the place of removal. Thus, it appeared that the adjudicating authority made error in processing and sanctioning of the refund under Notification No 41/2012- Service Tax, dated 29.06.2012.

2.4 Being aggrieved with the earlier Order-in-Originals passed by the then Assistant Commissioner, Division-III, Ahmedabad-II, in respect of the claims pertaining to the quarter ***(July, 2013 to September,2013; Oct,2013 to Dec-2013 and Jan,2014 to March, 2014),*** the revenue had preferred appeals with the Commissioner (A), Central Excise, Ahmedabad. Consequently, protective demands listed at column (c) of Table-A above, were therefore issued to the appellant proposing recovery of erroneous refunds sanctioned to them vide various Order-in-Originals. As the departmental appeal before the Commissioner (A) was pending, the protective demands/SCNs were transferred to the call book.

2.5 The Hon'ble Commissioner(Appeals-II) vide their Order In Appeal No AHM-EXCUS-002-APP-046-047-048-16-17 dated 29.9.2016, set aside the earlier OIOs and remanded the case back to original adjudicating authority. Thereafter all the SCNs was retrieved from call book and the remanded mater were re-adjudicated vide the impugned orders listed at column (D) of Table-A.

3. In the impugned orders mentioned above, the adjudicating authority partly rejected the claims on the grounds of limitation. He held that the claims were filed beyond the prescribed time limit of the Cenvat Credit Rules, 2004 and therefore the amounts mentioned at Column (F) of the Table-A above, is required to be recovered. For the remaining amounts he held that the appellant is eligible for refund and observed that the same has been disbursed/issued to the appellant vide earlier OIOs.

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

- The time period of 1 year prescribed in Section 11B of Central Excise Act, 1944 is for filing refund application within 1 year from the date of export. Section 11B of the Central Excise Act, 1944 has no co-relation with the time period of availing CENVAT credit in CENVAT register. The refund applications for respective quarters were filed within 1 year from end of the quarter. Hence, the refund is not hit by limitation.

- They claim to have availed CENVAT credit of Invoice in their CENVAT register during the said quarters. Copy of CENVAT credit register is also submitted. The time limit for availing CENVAT credit is governed by provisions of Rule 4 of CENVAT Credit Rules, 2004. Prior to 1st September 2014, there was no set time limit for availing CENVAT credit in CENVAT Credit Rules, 2004. With effect from 1st September 2014, a time limit of six months from the date of the document was introduced to avail CENVAT credit on input and input services. This restriction was introduced by inserting 3"" proviso to rule 4(1) of Cenvat Credit rules, 2004 vide notification 21/2014 CE NT dated 11 July 2014. This time limit of six months has further been enhanced to one year with effect from 1 March 2015 vide notification 6/2015 CE NT dated 1 March 2015. Since the some quarter pertains to period prior to September 2014, the time limit for availing CENVAT credit is not applicable. They claim that they have availed the Cenvat Credit of invoices older than 1 year till August, 2014 only. From September, 2014 they have availed Cenvat credit of invoices within six months only. Hence, the learned Assistant Commissioner has erred disallowing refund Reliance is placed on Order passed by Hon'ble CESTAT in the case of Central Bank of India Vs CCE& S.Tax.

- In Hon'ble Ahmedabad Tribunal's decision passed in the case of M/s. Spectramix Plastics and relied by the adjudicating authority, it can be clearly observed that the tax payer had filed refund application on 22 March 2011 for period pertaining to April to June 2009 and July to September 2009. Thus, the tax payer therein had filed refund application 1 year after the exports had been made. But in the present case refund application was filed within 1 year from date of export. Only during period under question they have availed CENVAT credit of invoice which was issued 1 year before. Thus, the learned Assistant Commissioner has erred in law and facts while considering the time limit of 1 year laid down in Section 11B of the Central Excise Act, 1944 as time period for availing CENVAT credit. The time period of 1 years provided in Section 11B of the Central Excise Act, 1944 pertains to time period for filing refund application from date of export, which has been duly complied.

- The SCN was retrieved from call book after 6 yrs and 3 months such delayed adjudication is complete breach of principles of natural justice as held by Hon'ble High Court in the case of Siddhi Vinayak Syntex Pvt. Ltd.- 2017 (352) E.L.T. 455 (Guj.)

5. Personal hearing in all the appeal matters was held on 17.04.2024 through virtual mode. Shri Karan Rajvir, Chartered Accountant appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written submissions and requested to allow the appeals.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the appeal memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of **Rs.71998/-, Rs.3,114/-, Rs.17,79,286/-, Rs.22,75,877/- & Rs.24,99,996/-** against the appellant along with interest, in the facts

and circumstance of the case is legal and proper or otherwise. The demand pertains to the period **July, 2013 to March, 2015.**

6.1 The adjudicating authority observed that in terms of Para-3, clause (b) of Notification No. 27/2012-CE(NT) dated 18.06.2012, the period specified in Section 11B of the CEA, 1944 would be applicable for filing the refund of Cenvat Credit. He observed that refund of unutilized Cenvat credit availed on various disputed Invoices were filed beyond the period of one year from the date of invoice/credit taken. Hence, the claim for said amounts were hit by limitation.

6.2 The appellant on the other hand claim that the time period of 1 year prescribed in Section 11B of Central Excise Act, 1944 is for filing refund application within 1 year from the date of export and has no co-relation with the time period of availing CENVAT credit in CENVAT register. They claim that the refund application for respective quarters were filed well within 1 year from end of that particular quarter. Hence, the refund is not hit by limitation

6.3 It is observed that the adjudicating authority has relied on following Para-3 clause (b) of the Notification No.27/2012-C.E. (N.T.), dated 18.06.2012, which is re-produced below;

*3. **Procedure for filing the refund claim.** - (a) The manufacturer or provider of output service, as the case may be, shall submit an application in Form A annexed to the notification, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, in whose jurisdiction,-*

(i) the factory from which the final products are exported is situated.

(ii) the registered premises of the provider of service from which output services are exported is situated.

(b) The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed by the claimant, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944).

6.4 Section 11B prescribes that every refund claim is to be filed from the before expiry of one year from the relevant date.

*SECTION [11B. **Claim for refund of [duty and interest, if any, paid on such duty].** — (1) Any person claiming refund of any [duty of excise and interest, if any, paid on such duty] may make an application for refund of such [duty and interest, if any, paid on such duty] to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] **before the expiry of [one year] [from the relevant date]** [[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of [duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such [duty and interest, if any, paid on such duty] had not been passed on by him to any other person :*

***Provided** that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act :]*

*[**Provided** further that] the limitation of [one year] shall not apply where any [duty and interest, if any, paid on such duty] has been paid under protest.*

6.5 The terms explanation to Section 11B clarifies that **'relevant date'** shall be as;

(B) **"relevant date"** means, -

*(a) **in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -***

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

[(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;]

[(ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the date of issue of such order;]

[(eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;]

[(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;]

(f) in any other case, the date of payment of duty.]

6.6 From the categories specified hereinabove, I find that in case of goods exported out of India where a refund of excise duty paid in respect of the goods themselves or, where refund for the excisable materials used in the manufacture of such goods is claimed then as per sr.no. (i) above, the relevant date shall be the date of export.

6.7 Notification No.27/2012-CE (NT) dated 18.06.2012 provides for refund of CENVAT Credit under Rule 5 of the said rules. Rule 5 of the CCR, prescribes for refund of Cenvat credit, where a manufacturer clears the finished goods for export without payment of duty under bond or LUT, then such manufacturer shall be eligible for refund of Cenvat credit as determined by the formula given therein. In the instant case, the appellant has exported the goods and are claiming the refund of duty/tax paid on input goods or input service as they are not in a position to utilize the accumulated Cenvat credit lying in balance because these dutiable inputs/services were utilized in manufacture of final products which were cleared for export under bond.

7. The adjudicating authority has relied on the judgment of Hon'ble High Court of Karnataka passed in the case of SURETEX PROPHYLACTICS INDIA PVT. LTD. Versus COMMR. OF C. EX., CUS. & S.T., BANGALOR- **2020 (373) E.L.T. 481 (Kar.).** The Hon'ble High Court by relying on Hon'ble Apex Court judgment passed in the case of *Union of India & Others* v. *Uttam Steel Limited* reported in (2015) 13 SCC 209 = 2015 (319) E.L.T. 598 (S.C.) has held that;

"11. .....

....Thus, the irresistible conclusion which has to be necessarily drawn is to the effect that in respect of refund of claims made under Rule 5 of CENVAT Credit Rules, 2004 the provisions of Section 11B of the Central Excise Act would be squarely applicable. Even in respect of the refund claims made under the CENVAT Credit Rules, 2004 insofar as it relates to "service providers" under the Finance Act, 1994, the provisions of Central Excise Act, 1944 as specified in Section 83 of the Finance Act, 1994 would cover the same inasmuch as, Section 11B also finds a place in Section 83 of the Finance Act, 1994.

12. *Though argument is sought to be put forward by contending that by virtue of notification dated 1-3-2006 specifying the period of limitation, we are not inclined to accept the same, inasmuch as, Rule 5 of CENVAT Credit Rules itself clearly specifying that such refund claims would be subject to "such safeguards, conditions and limitations as may be specified, by the Central Government, by notification" and the above referred Notification No. 5/2006 and 27/2012 clearly specifying in clause (6) and clause 3.0(b) respectively that "before the expiry of the period specified in Section 11B of the Central Excise Act, 1944" it cannot be gainsaid by the appellants that provisions of Section 11B of the Central Excise Act is not attracted to the refund claims made under CENVAT Credit Rules, 2004. Hence, we answer the substantial questions of law formulated in appeals 31/2017, 32/2017, 33/2017 & 25/2018 by holding that refund applications filed under the CENVAT Credit Rules, 2004 cannot be without reference to limitation or time prescribed under Section 11B of the Central Excise Act, 1944.*

We also answer the substantial question of law formulated in Appeal No. 35/2018 at question Nos. 1, 3 & 4 to the effect that limitation for claiming refund of unutilized Cenvat credit should be within the period prescribed under Section 11B of Central Excise Act." .

13. *In the instant case, the appellant has obtained registration under the provisions of Finance Act, 1994 in the category of service provider as "scientific and technical consultancy services". As the entire taxable services rendered by the appellant for exporting outside India and on account of appellant not having any domestic service tax liability, the input service credit availed by it on the taxable input services, received by it remained unutilized. Hence, appellant sought for refund of this unutilized input credit under Rule 5 of CENVAT Credit Rules, 2004 by submitting 16 refund claims. Said applications came to be rejected as not having been filed within the limitation prescribed under Section 11B of the Central Excise Act. While answering substantial questions of law (1), (3) & (4) hereinabove, we have already held that provisions of Section 11B of Central Excise Act would be applicable though Section 11B of the Act does not cover refund of Cenvat credit, Notification No. 5/2006 makes it explicitly clear that for the purpose of relevant date for computing one year prescribed under Section 11B, it has to be determined by applying Rule 5 of Cenvat Credit Rules, 2004, necessarily the refund claims ought to have been filed within one year from the relevant date as specified in Section 11B.* ***In other words, time-limit has to be computed from the last date of the last month of the quarter which would be the relevant date for the purposes of examining if the claim is filed within the limitation prescribed under Section 11B or otherwise.*** *The details of the refund claims insofar as it relates to 12 claims was on 3-1-2014 had been filed beyond one year from the last date of the last month of the quarters and as such, they were clearly time-barred. Insofar as remaining 4 claims, matter has been remanded to the original authority, against which there is no appeal by the revenue.* ***Hence, we answer the substantial question of law No. 2 that Tribunal was right in holding that the "relevant date for computation of time-limit will be the end of the quarter" in which FIRC's are received as per the extant Notification No. 27/2012-C.E. (N.T.), dated 18-6-2012."***

[Emphasis Supplied]

7.1 In the above decision relevant date is considered as one year from end of the quarter and not the date of invoice. However, in the present case, the time limit has been computed from the date of invoice and not the end of the quarter as held in the above judgment. Hence, the reliance placed by the adjudicating authority on the above judgment is misplaced.

7.2 Further, I find that the adjudicating authority has also relied on the decision of Hon'ble CESTAT, WEST ZONAL BENCH, AHMEDABAD passed in the case of RANGDHARA POLYMERS Versus COMMISSIONER OF C. EX., AHMEDABAD-II- **2022 (379) E.L.T. 382 (Tri. - Ahmd.).** Wherein, the Tribunal has relied on the decision taken in the case of *Spectramix Plastics* v. *CCE* (supra) where an observation was made that refund claim in terms of Notification No. 5/2006-C.E. (N.T.) issued under Rule 5 of Cenvat Credit Rules, 2004 is subject to one year time-bar as prescribed under Section 11B of Central Excise Act, 1944. Hon'ble Tribunal also observed that in the case of *Emerson Innovation Center* v. *CCE, Pune* (supra), wherein it was held that in respect of refund under Rule 5 against export of goods Section 11B of Central Excise Act, 1944 is applicable and also held that refund of Cenvat credit relatable to export beyond one year is time-bar. Again, I find that the reliance on the above decision of adjudicating authority is misplaced as in the said case also the date of export has been considered for computing one year period of limitation.

7.3 Similar observation was made by Hon'ble High Court of Madras in the case of COMMISSIONER OF C. EX., COIMBATORE Versus **GTN ENGINEERING (I) LTD- 2012 (28) S.T.R. 426 (Mad.)**, wherein it was held that;

"13. In terms of the said rule, the Central Government should notify as to the safeguards, conditions and limitations. Accordingly, Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006 has issued. Clause 6 appendix to the notification reads as under :

"6. The application in Form A, along with the prescribed enclosures and the relevant extracts of the records maintained under the Central Excise Rules, 2002, CENVAT Credit Rules, 2004, or the Service Tax Rules, 1994, in original are filed with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, before the expiry of the period specified in Section 11B of the Central Excise Act, 1944 (1 of 1944)".

14. The said notification prescribes a period of one year, as provided under section 11B of the Central Excise Act, for the purpose of making application in Form-A along with prescribed enclosures and also the relevant extracts of the records maintained under the Central Excise Rules, 2002, Cenvat Credit Rules, 2004 or Service Tax Rules, 1994 in original. That application should be filed before the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be. For the purpose of finding out as to the relevant date for the purpose of making claim for refund of CENVAT credit, Rule 5 should be made applicable. It is the contention of the learned counsel for the assessee that the provision defining relevant date does not cover the claim for refund of CENVAT credit. We may point out that when a statute empowered for such claim, the said provision must be read to find out as to the relevant date. Rule 5 specifies that "where any input or input service is used in the manufactures of final product which is cleared for export under bond or letter of undertaking as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed."

15. A reading of the above rule, though there is no specific relevant date is prescribed in the notification, the relevant date must be the date on which the final products are cleared for export. If

any other conclusion is arrived, it will result in disentitling any person to make a claim of refund of CENVAT credit. Admittedly, the respondent has made a claim only invoking Rule 5 of the CENVAT Credit Rules, 2004. ***In that view of the matter, there cannot be any difficulty for us to hold that the relevant date should be the date on which the export of the goods was made and for such goods, refund of CENVAT credit is claimed."***

8. Further, I find that CBEC vide Notification 14/2016-CE(NT) has put rest to various interpretation by amending Notification No.27/2012- CE(NT), wherein para-3 for clause (b) was substituted as under;

The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed as under:

(i) In case of manufacturer, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944);

(ii) In case of service provider, before the expiry of one year from the date of –

(a) Receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or

(b) Issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice.

9. Thus, applying the ratio of above judgment, I find that relevant date for filing the claim seeking refund of Central Excise duty paid on inputs & service tax paid on inputs services under the provision of Rule 5 of the CCR, 2004 read with Notification No.05/2006-CE(NT) dated 14.03.2006 superseded by Notification No.27/2012-CE(NT) dated 18.06.2012, shall be the one year from date of export in case of manufacturer and not one year from the date of Cenvat credit availed/ date of invoice as held by the adjudicating authority. In terms of Section 11B, for the claiming refund of duty/tax paid on inputs/input service used in exported goods, the relevant date shall be the date of export. The question of refund arises only when the goods are exported and therefore, I find that the findings of the adjudicating authority is legally not sustainable. I, therefore, find that the rejection of claims on limitation, considering the date of invoice as relevant date is not justifiable and needs to be set-aside. When the demand does not sustain the question of recovering the interest also does not arise.

10. Accordingly, I set-aside the impugned orders and allow the appeals filed by the appellant.

11. **अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।**

The appeals filed by the appellant stands disposed of in above terms.

(ज्ञानचंदजैन)
आयुक्त(अपील्स)

Date: .4.2024

Attested
(रेखा नायर)
अधीक्षक (अपील्स)
केंद्रीय जी. एस. टी, अहमदाबाद

By RPAD/SPEED POST

To,
M/s. Amneal Pharmaceuticals Pvt. Ltd.(100% EOU),
Plot No. 882/1-871, - **Appellant**
Nr. Hotel Kankavati, Village-Rajoda, Bavla,
Ahmedabad--382220

The Deputy/Assistant Commissioner - **Respondent**
CGST & Central Excise,
Division-V, Ahmedabad North

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.