



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate  
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**By SPEED POST**

DIN:- 20240564SW0000922338

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/129/2024 & /S&S-SU GAPPL/COM/CEXP/130/2024
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-26 to 27/2024-25 dated 10.05.2024
(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	29.05.2024
(ङ)	Arising out of Order-In-Original No. 15/AC/Refund/2023-24/FRC dated 14.8.2023 & 16/AC/Refund/2023-24/FRC dated 14.08.2023 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. S. No. 47, Vill. Lodariyal Sanand 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:-

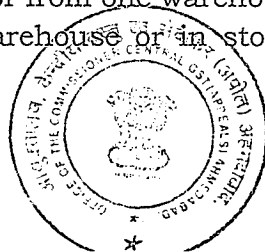
**Revision application to Government of India:**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में 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, 4<sup>th</sup> 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 प्रक्रिया 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 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.

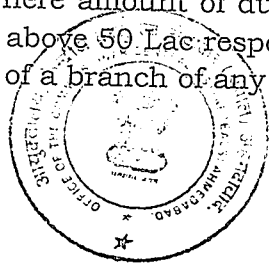
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, 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 है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या 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 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 अपील 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., 100% EOU (earlier Dishman Pharmaceuticals & Chemicals), S. No. 47, Village Lodariyal, Sanand, Ahmedabad (hereinafter referred to as 'the appellant') have filed following appeals against the Order-in-Originals (mentioned in the table below) passed by the Assistant Commissioner, Central GST, Division-IV, Ahmedabad North (hereinafter referred to as 'the adjudicating authority'). The appellant were holding both Central Excise & Services Tax Registration.

**Table-A**

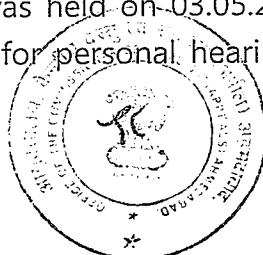
Sr.No.	Appeal No.	OIO No. & Date	Refund of pre-deposit Sanctioned	Interest Claimed
01	129/2024	15/AC/Refund/2023-24/FRC dated 14.08.2023	1,14,814/-	78,853/-
02	130/2024	16/AC/Refund/2023-24/FRC dated 14.08.2023	4,41,462/-	2,59,434/-

**2.2** Briefly stated the facts of the case are that the appellant preferred two appeals before the then Commissioner (A), for which they made pre-deposits under Section 35F of the CEA, 1944. However, these appeals were rejected. Aggrieved, the appellant went in appeal before Hon'ble Ahmedabad Tribunal. Hon'ble CESTAT subsequently decided the matter in favour of the appellant. Consequently, the appellant filed two claims seeking refund of pre-deposits made under Section 35F of the CEA, 1944 alongwith interest. The adjudicating authority vide the impugned orders sanctioned the refund of pre-deposit. However, the interest was rejected on the findings that Section 35FF of the Central Excise Act, as it stood prior to 06.08.2014, provides for payment of interest only if the pre-deposit amount is not refunded within a period three months from the date of communication of the order to the adjudicating authority. He observed that in the present case as the refund was granted within three months from the date of communication of the order hence liability to pay interest does not arise. Thus, interest on pre-deposit was not granted.

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

- The appellant submits that they are eligible for interest on the pre-deposit amount right from the date of payment of pre-deposit to date of impugned OIOs. It is a settled law that once the claimant / assessee is eligible for refund of pre-deposit, then for the period of delay, the claimant/assessee, is also eligible for interest @ 6%, for the entire period of such delay. Therefore, it is prayed to kindly allow the appeals with a direction to the lower authority to sanction the interest as calculated above.
- The appellant has relied on following in support of their above argument;
  - Para-26 of CBEC Circular No, 1053/2/2017-CX dated 10.03.2017
  - Hasmukh Tobacco Products- 2023 (2) TMI 774 CESTAT AHM

**4.** Personal hearing in the appeals matter was held on-03.05.2024 through virtual mode. Shri R. Subramanya, Advocate appeared for personal hearing on behalf of the



appellant. He informed that the refund has been granted but interest was not granted. He relied on the judgment of Hasmukh Tobacco Products and requested to allow their appeals.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing and the documents available on record. The issue to be decided in the present appeal is whether the appellant is eligible for interest on the refund of pre-deposit granted by the adjudicating authority. The pre-deposit has been made in **March, 2012 & October, 2013.**

5.1 It is observed that the appellant has made the pre-deposit on March, 2012 and October, 2013. Considering the period involved, Section 35FF of the Central Excise Act (as was prevalent prior to 06-08.2014) has been reproduced hereunder for the ease of reference:

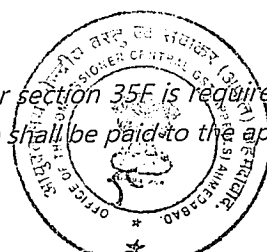
*"35FF. Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount."*

5.2 A plain reading of the aforesaid provision reflects that any amount deposited pursuant to the order passed by any Authority is liable to be refunded within a period of three months from the date, the order is set aside by the Appellate Authority and in case, it is not so refunded within three months of the communication of the appellate order, interest at the specified rate shall be payable on it for the delayed period after three months.

5.3 The aforesaid provision of Section 35FF of the Act was amended by the Finance Act (No. 25) of 2014 with effect from 06.08.2014 and it was provided that where any amount deposited by the party under Section 35F of the Act is required to be refunded consequent upon the order of the Appellate Authority, it will carry an interest at the specified rate till the date of refund. It permits payment of interest at the specified rate for the entire period, the amount remains deposited with the authority. However, the aforesaid provision has been subjected to a proviso, which lays down that if any amount has been deposited prior to the enforcement of the Finance Act No. 25 of 2014 i.e. before 06.08.2014, it shall continue to be governed by the un-amended provision of Section 35FF of the Act, which means that in cases of deposit made prior to 06.08.2014, interest would be payable only if the amount is not refunded within a period of three months from the date of communication of the appellate order.

**Amended Section 35FF Post 6.8.2014 read as;**

*"35 FF: Where an amount deposited by the appellant under section 35F is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at*



*such rate, not below five percent and not exceeding thirty-six percent per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of the amount till the date of refund of such amount. Provided that the amount deposited under section 35F, prior to the commencement of the Finance (No.2) Act, 2014 shall continue to be governed by the provisions of Section 35 FF as it stood before the commencement of the said Act."*

5.4 In the present case, the amount was deposited by the appellant on 06.03.2012 and 30.10.2013. The orders of hon'ble CESTAT passed on 03.08.2013 and 06.07.2023 were communicated to the adjudicating authority on 08/10.08.2023 and consequent refund was actually made on 14.08.2023. From the facts, I find that the refund has been sanctioned within three months of the Tribunals order, hence, question of paying interest does not arise.

5.5 However, it is observed that the appellant to claim interest has relied on Para-26 of CBEC Circular No, 1053/2/2017-CX dated 10.03.2017 & decision passed by CESTAT Ahmedabad in the case of Hasmukh Tobacco Products- 2023 (2) TMI 774.

5.6 The CBIC circular states that;

*"26. Refund of pre-deposits : (i) Where the appeal is decided in favour of the party/assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944.*

*(ii) Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944. Therefore, in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not."*

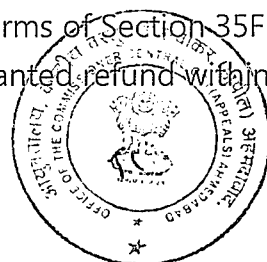
I find that the above circular was issued subsequent to the amendment in Section 35FF introduced from 06.08.2014, hence such clarification cannot be applied to the present case.

5.7 I find that Hon'ble Delhi High Court in the case of *Afcons Infrastructure Ltd Vs UOI (2014) 49 taxman.com 79 (Delhi)* at Para-5 has observed as under;

*"5. A plain reading of the above provision would indicate that in case the refund, consequent upon an appellate authorities order, is not made within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a Superior Court or Tribunal, it shall carry interest at the rate specified in Section 11BB of the said Act after the expiry of the period of three months from the date of communication of the order of the appellate authority, till the date of actual refund. "*

5.8 Hence, the plain reading of the statutory provisions make it abundantly clear that where the pre-deposit is made prior to 06.08.2014, the interest shall accrue after three months from the date of communication of the order of appellate authority to the adjudicating authority/concerned jurisdictional Commissioner, till the date of refund.

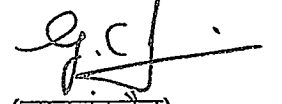
5.9 In the present case, I find that the refund was granted on 14.08.2023 i.e. within three months from the date of Hon'ble Ahmedabad Tribunal Orders dated 06.07.2023 & 03.08.2023, passed in the case of the appellant. So, in terms of Section 35FF as it existed prior to 06.08.2014, I find that the appellant has been granted refund within three month



from the date of communication of CESTAT order. Hence, I do not find any infirmity in the order of the adjudicating authority.

6. Accordingly, the impugned order is upheld.

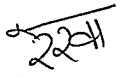
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeals filed by the appellant stands disposed of in above terms.

  
(ज्ञानचंदजैन)

आयुक्त(अपील्स)

Date: 10.5.2024

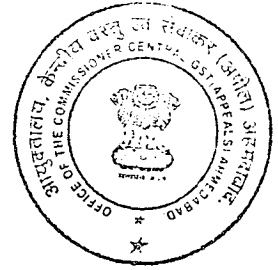
Attested



(रेखा नायर)

अधीक्षक (अपील्स)

केंद्रीय जी. एस. टी, अहमदाबाद



**By RPAD/SPEED POST**

To,  
M/s. Dishman Carbogen Amcis Ltd. (100% EOU) -  
(Earlier Dishman Pharmaceuticals & Chemicals),  
S. No. 47, Village Lodariyal, Sanand,  
Ahmedabad

**Appellant**

The Deputy/Assistant Commissioner -  
CGST & Central Excise,  
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.

