



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

☎ : 079-26305065

☎ : 079 -26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)60to62&81/Ahd-South/2019-20 / 13022 To 13026

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-JC-06 to 09-2019-20
दिनांक Date : 19-11-2019 जारी करने की तारीख Date of Issue 21/11/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathor, Joint.Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/Ws08/Ref-227&228/BSM/2018-19 दिनांक: 29.03.2019
, CGST/Ws08/Ref-14/BSM/2019-20 दिनांक: 11.04.2019 , CGST/Ws08/Ref-55/BSM/2019-20
दिनांक: 13.06.2019 issued by Assistant Commissioner, Div-VIII, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
U Square Lifescience Pvt.ltd
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 या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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।

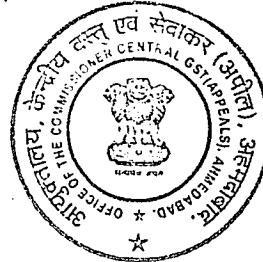
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 प्रक्रिया 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.

(b) 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।



... 1 ...

(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।

(b) 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।

(c) 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।

(d) 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.

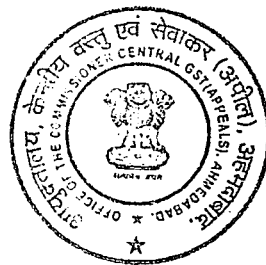
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-

Under Section 112 of CGST act 2017 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

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



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

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

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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।

6(I) 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017, may file an appeal before the appropriate authority



ORDER-IN-APPEAL

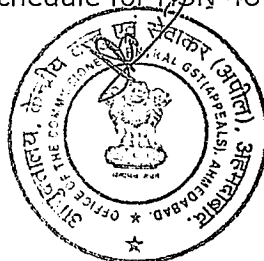
Four appeals have been filed by M/s U Square Lifescience Pvt Ltd, 1101-03, Solitaire Corporate Park, Beside Divya Bhaskar, S.G.Road, Ahmedabad-51 [hereinafter referred to as "appellant"] against Orders -in-Original [for short- OIO] passed in GST-RFD-06 by the Assistant Commissioner of CGST, Division-VIII (Vejalpur), Ahmedabad-South [hereinafter referred to as "adjudicating authority"]. The details are as under:

S No	Appeal No.	OIO No. & Date	Period	Amount involved (Rs)
1	60/Ahd-South/19-20	CGST/WS08/Ref-228/BSM/2018-19 dated 29.03.2019	November 2018	1,03,477/-
2	61/Ahd-South/19-20	CGST/WS08/Ref-227/BSM/2018-19 dated 29.03.2019	October 2018	66,041/-
3	62/Ahd-South/19-20	CGST/WS08/Ref-14/BSM/2018-19 dated 11.04.2019	December 2018	1,09,720/-
4	81/Ahd-South/19-20	CGST/WS08/Ref-55/BSM/2019-20 dated 13.06.2019	January 2019	1,47,433/-

2. Briefly stated, the facts of the cases are that the above mentioned four refund claims were filed by the appellant before the adjudicating authority, pertaining to CGST/IGST and SGST amount paid as input services used for export of service during the periods from October 2018 to January 2019. As it is found that the said refund claims filed by the appellant on accumulated ITC were at higher rate of tax than the actual rate of tax prescribed, show cause notices were issued to them for rejecting excess amount involved in the refund claims. Vide OIO, the adjudicating authority has sanctioned eligible refund amount and rejected the excess refund amount as mentioned above.

3. Feeling aggrieved, the appellant has filed the instant four appeals on the grounds that:

- Rate of tax charged by the supplier in the invoice should be considered for refund computation.
- They received job work services for manufacturing medicines; that the service provider has raised invoices for providing job work services by mentioning SAC code and other details. The department has incorrectly considered as supply of goods instead of supply of service.
- They further received packing materials under HSN 4819 from the supplier by charging tax @18%; that the rate of tax prescribed under notification 1/2017-CT dated 28.06.2017 as amended, at entry No.153A of the Schedule III is 18%. However, the department has disallowed the refund claim by referring entry No.122 of the said Schedule for HSN 4819 is 6%.



4. Personal hearings in all the four appeals were held on 04.11.2019. Shri Gopal Krishna Laddha, Chartered Accountant and Shri Dhaval Bhavishi (Account Executive of the appellant) appeared on behalf of the appellant for the same and reiterated the submissions made in the appeal memorandums and written submission dated 27.09.2019.

5. I have carefully gone through the facts of the cases and submissions made by the appellant in all four appeal memorandums, written submission dated 27.09.2019 and submissions made at the time of personal hearing. The issue involved in all four appeals is as to whether the appellant is eligible for refund on Input Tax Credit availed as per supplier invoice or otherwise.

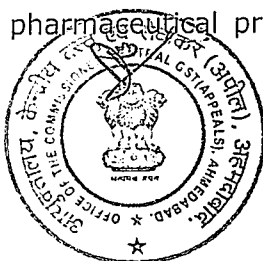
6. At the outset, I find that the appellant received goods falling under HSN 3004 from their job worker and also received packing materials falling under HSN 4819 from their suppliers. I further find that after given provisional refund, the adjudicating authority has scrutinized the refund claims in question and rejected the amount mentioned above on the grounds that:

[i] the actual tax rate prescribed for HSN code 3404 is at the rate of 12% whereas the appellant has claimed the refund on accumulated ITC @ 18% tax as per tax paid in the invoice; and

[ii] the tax rate for goods falling under HSN 4819 is 12% as per Sr.No.122 of Schedule II of Notification No.01/2017-CT (Rate) dated 28.06.2017, whereas the appellant has claimed the refund on accumulated ITC @ 18% tax as per Sr.No.153A of Schedule III of notification ibid.

On other hand, the appellant has contended that in respect of goods falling under HSN 3004, services of job work having SAC 9988 was provided by the supplier of goods and the rate specified for the same is 18%; that in respect of goods falling under HSN 4819, the rate specified under notification No.01/2017 supra as amended (Sr.No.153 A) is 18% and the adjudicating authority has wrongly quoted Sr.No.153 and Sr.No.122 of the said notification for attracting 12% tax rate.

7. As regards [i] above, I find that the refund claims in question are in respect of accumulated ITC on tax paid on goods falling under HSN 3404, received from their job worker. I observe that the appellant was receiving pharmaceutical products falling under HSN 3404 from their job worker after due process. On perusal of the invoices furnished by the appellant, I observe that the job worker has charged 18% tax rate (SGST/ CGST) as supply of service under Service Accounting Code (SAC) 998843 which pertaining to Pharmaceutical product manufacturing service. As per Explanatory Notes to Scheme of Classification of Service, SAC 998843 represents "Pharmaceutical product manufacturing services" which attracts 18% (SGST and CGST) tax rate. The invoices also indicate that the goods received by the appellant from the job worker are pharmaceutical products, falling under



HSN code 3004. Pharmaceuticals products falling under HSN 3004 attracts CGST/GST @12%. In the circumstances, now the question arises whether the appellant received supply of goods or supply of service from the job worker in the context of job work.

8. I observe from the invoices of job worker that the appellant received goods under SAC 998843(invoice No.451/18-19) as well as 30049099 (invoice No.455/18-19). This clearly indicates that the appellant also received supply of goods. In the circumstances their argument that the department has wrongly considered supply of goods instead of supply of service fails. Further, I find that the appellant has failed to establish the fact, either before the adjudicating authority or in the submissions made in the instant appeals that they received supply of service only from the job worker in respect of the goods in question processed at job workers end. Without proper bifurcation of supply of goods and supply of service, refund on higher rate of tax paid by them in total cannot be refundable. In the circumstances, the adjudicating authority has rightly rejected the refund claim of excess tax paid.

9. As regards [ii] above, I find that the GST rate for goods falling under HSN code 4819 is specified under notification No.01/2017-CT dated 28.06.2017 as amended. In the said notification as amended, Sr.No.122 (Schedule II) and 153A (Schedule III) describes the rate of tax falling under HSN 4819. The description specified at Sr.No.122 and 153 A of the said notification as amended is reproduced below.

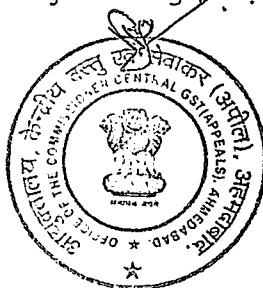
Schedule II – 6%

S No	Chapter heading	Description of goods
122	4819	Cartons, boxes and cases of corrugated paper or paper board

Schedule III-9%

S No	Chapter heading	Description of goods
153 A	4819 20	Cartons, boxes and cases of non-corrugated paper or paper board

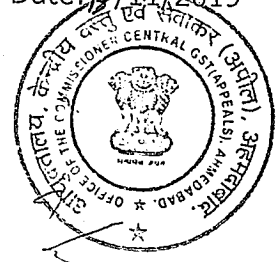
From the above, it is very much clear that the goods viz. "Carton, boxes and case of corrugated or paper board" falling under chapter 4819 attracts SGST and CGST 6% tax and goods viz "Cartons, boxes and cases of non-corrugated paper or paper board", falling under chapter 481920 attracts tax @9% SGST and CGST. On perusal of invoices submitted by the appellant, I find that they received "cartons" mentioning HSN 4819. In the circumstances, obviously, the goods attracts tax rate of 6% SGST and CGST only. It is the responsibility of the appellant to prove that they received only Cartons, boxes and cases of non-corrugated paper or paper board. However, in the instant cases, no such documentary evidences put forth by the appellant either before the adjudicating authority or in the appeal



memorandums. Since the invoices under which the goods in question received by the appellant clearly indicate that they received the goods viz., "cartons -falling under chapter 4819" only, undoubtedly the goods clearly falls under Sr.No.122 of schedule II supra instead of Sr.No.153A of schedule-III supra. Looking into the facts discussed above, I find that the adjudicating authority has correctly rejected the refund claim filed by the appellant on excess tax paid. Therefore, I do not find any merit in the appeal filed by the appellant.

10. In view of above, I reject the appeal filed by the appellant and uphold the impugned order. The appeal stands disposed of in above terms.

(Mukesh Rathor)
Joint Commissioner (Appeals)
Date: 10/11/2019



Attested

Mohan V.V.
(Mohan V.V)
Superintendent (Appeals)
CGST, Ahmedabad.

To
M/s U Square Lifescience Pvt Ltd,
1101-03, Solitaire Corporate Park,
Beside Divya Bhaskar, S.G.Road, Ahmedabad-51

Copy to: The Chief Commissioner of CGST, Ahmedabad Zone
The Principal Commissioner of CGST, Ahmedabad South
The Assistant Commissioner of CGST, System, Ahmedabad South
The Assistant Commissioner of CGST, Div-VIII, Ahmedabad South
✓ Guard file
P A File.

