

• आयुक्तालय (अपील-I) केंद्रीय उत्पादन शुल्क *
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटैकनिक के पास, आमबाबाडि,
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(30)/2&3/Ahd-I/2016-17 | 1358-62
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-088 & 089-2016-17
दिनांक 30.03.2017 जारी करने की तारीख Date of Issue 06/04/2017

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Asst. Commissioner, Div-I केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वार जारी मूल आदेश सं
09/Cx-I Ahmd/AC/PS/2015 दिनांक: 22/01//2016, से सृजित

Arising out of Order-in-Original No. 09/Cx-I Ahmd/AC/PS/2015 दिनांक: 22/01//2016 issued by
Asst. Commissioner, Div-I Central Excise, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Shree KrishnaKeshav Laboratories ltd
&
Shri Vipul A Mehta
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथि नीचे बताए गए सक्षम अधिकारी को
अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person as 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) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक
के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली
: 110001 को की जानी चाहिए।

(i) A revision application lies to the Under-Secretary, to the Govt. of India, Revision Application Unit
Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first
proviso to sub-section (1) of Section-35 ibid :

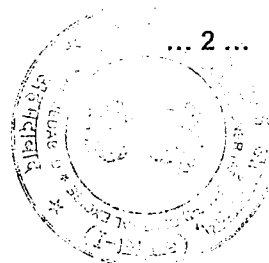
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के
दौरान हुई हो।

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

(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।

... 2 ...



(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 त्रिनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

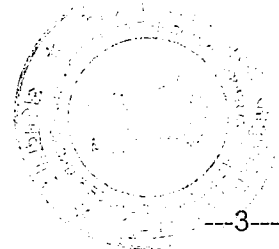
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.



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।

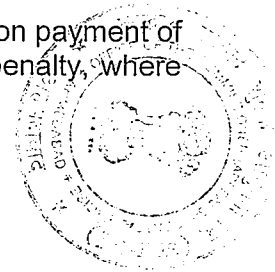
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



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ORDER-IN-APPEAL

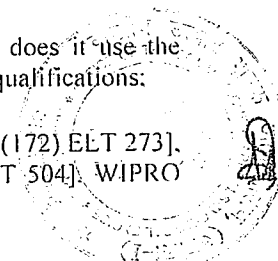
Two appeals have been filed by [a] M/s Shree Krishnakeshav Laboratories Limited, Nr. New Cotton Mill, Behind Indranagar, Amraiwadi, Ahmedabad- 380026 (for short – “*appellant-1*”) and Shri Vipul Mehta, MD of appellant-1 [for short – ‘*appellant-2*’] against OIO No. 9/CX-1Ahmd/AC/PS/2015 dated 22.1.2016 passed by the Assistant Commissioner, Central Excise, Division I, Ahmedabad-1 Commissionerate (for short – “*adjudicating authority*”).

2. A show cause notice dated 9.1.2015 was issued to the appellant covering the period from 1.4.2014 to 31.8.2014, demanding central excise duty along with interest and further proposing penalty on the appellant-1 and appellant-2 alleging, *inter alia*, that they had wrongly availed the benefit of notification No. 1/2011-CE dated 1.3.2011 amended vide notification No. 16/2012-CE dated 17.3.2012. The notice further alleged that the medicaments manufactured by the appellant-1 were anti bacterial/anti biotic/anti fungal/anti parasitic/anti dot/diuretic products and hence would not qualify as IV fluids. As per the exemption notification, intravenous fluids, which are used for sugar electrolyte or fluid replenishment are exempt.

3. The aforementioned notice was adjudicated vide the impugned OIO dated 22.1.2016, wherein the adjudicating authority confirmed the demand along with interest and further imposed penalty on appellant-1 and appellant-2.

4. Feeling aggrieved, the appellant-1 and appellant-2 have filed the appeals raising the following averments:

- the contention that no additives or preservatives can be added in IV fluids whereas drugs contained in the said medicines were in the nature of additives and therefore the resultant products thus become ‘intravenous admixture (IV drip) and do not remain IV fluid is not correct;
- that fluid does not lose its basic character when a medicament is added; that the appellant has been granted license for addition of the medicaments under the definition of IV fluids;
- that the route of administration of these products are through intravenous and hence the said products come under intravenous infusion;
- that IV fluids are large volume parenterals for intravenous administration not only for fluid replacement, electrolyte restoration and supplementary nutrition but also as a vehicle for administration of drugs; that exemption notification does not indicate that IV fluids should exclusively be used for sugar, electrolyte or fluid replenishment;
- that the additional subsidiary use may be for anti bacterial or other medicinal properties induced by use of small quantities by admixture of ciprofloxacin, would not render the intended use ineffective;
- that in his opinion Dr P Mahanwar, Professor, has clearly stated that if the contents in the IV fluid are inert to the medicine then its activity will remain same but if the medicine molecule has any interaction either physical or chemical then its activity may change and IV fluid remains fluid only;
- that the notification does not contain any restriction or prohibition, nor does it use the expression, likely, solely or only or exclusively with reference to the three qualifications;
- that penalty under Section 11AC is not impossible;
- that they would like to rely on the case laws of Prem Pharmaceuticals[2004(172) ELT 273], TISCO[1997(1) ELT J 61], Garware Wall Ropes Limited [1998(102) ELT 504] WIPRO



[1000(107) ELT 398], Wockhardt Limited [2009-TIOL-1308-CESTAT-MUM], Cosmic Dye Chem [2002-TIOL-236-SC], Eplicit Trading and Marketing [2004(169) ELT 205 and 2009(240) ELT A-16], Goyal MG Gases Private Limited [2004(168) ELT 369], Tamilnadu Housing Board [1994(74) ELT 9], Padmini Products [1989(43) ELT 195] and Gopal Zarda Udyog [2005(188) ELT 251 (SC)]:

- that no penalty can be imposed on appellant-2: that they would like to rely on the case of J C Mistry [2014(310) ELT 22].

5. Personal hearing in respect of both the appeals were held on 20.3.2017, wherein Shri Pulkesh Mehta, Manager, appeared on behalf of the appellants and reiterated the submissions advanced in the grounds of appeal.

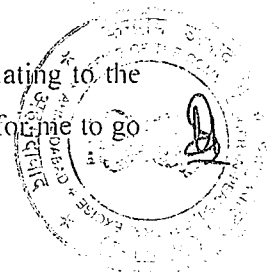
6. I find that there is a delay of twelve days in filing both the appeals. Both the appellants have filed condonation of delay application, in this regard. In terms of proviso to section 35 of the Central Excise Act, 1944, I condone the delay.

7. I have gone through the facts of the case, the appellant's grounds of appeal, and the oral submissions made during the course of personal hearing. The primary question to be decided is [a] whether the appellant is eligible for availing the benefit of exemption notification No. 1/2011-CE dated 1.3.2006 amended by notification No. 16/2012-CE dated 17.3.2012. The issue for decision as far as appellant-2 is concerned is whether he is liable for penalty under Rule 26 of the Central Excise Rules, 2002.

8. The first notice in the matter dated 31.7.2014 was issued by DGCEI, covering the period from July 2009 to March 2014. I find that the notice issued by DGCEI, was adjudicated by the Commissioner, Central Excise, Ahmedabad-I vide OIO No. AHM-EXCUS-001-COM-006-14-15 dated 10.3.2015. The present dispute for which show cause notice dated 9.1.2015 is issued, covers the period from April 2014 to August 2014.

9. As per the impugned OIO dated 22.1.2016, the appellant did not submit any reply to the show cause notice dated 9.1.2015, since an appeal was pending before the Hon'ble CESTAT, against the OIO dated 10.3.2015, passed by the Commissioner, Central Excise, Ahmedabad-I, for the earlier period. Consequently, the adjudicating authority vide his impugned OIO dated 22.1.2016, in para 14, did not go into the merits of the case, but simply concluded, that the allegation made in the show cause notice gets proved in favour of the department.

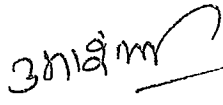
10. Since I do not find any discussion by the adjudicating authority relating to the charges made in the show cause notice, it would not be appropriate or possible for me to go



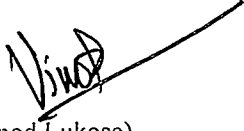
in to the merits vis-a-vis the grounds raised by the appellant. The impugned OIO, at best is a non speaking order.

11. In view of the foregoing, in the interest of justice, it would be appropriate to remand back the case to the original adjudicating authority to pass an order after going into the merits of the allegation raised in the show cause notice. Further, the appellant(s) are also directed to provide their submissions in respect of the notice dated 9.1.2015, within a month of the receipt of this order.

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


(उमा शंकर)
आयुक्त (अपील्स - I)

Date : 20.03.2017
Attested


(Vinod Lukose)
Superintendent (Appeal-I),
Central Excise,
Ahmedabad.

By RPAD.
To,

| | |
|---|---|
| M/s Shree Krishnakeshav Laboratories Limited, Nr. New Cotton Mill, Behind Indranagar, Amraiwadi, Ahmedabad- 380026, Gujarat. | Shri Vipul Mehta, MD M/s Shree Krishnakeshav Laboratories Limited, Nr. New Cotton Mill, Behind Indranagar, Amraiwadi, Ahmedabad- 380026, Gujarat. |
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Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad-I.
3. The Deputy/Assistant Commissioner, Central Excise Division-I, Ahmedabad-I.
4. The Assistant Commissioner, System, Central Excise, Ahmedabad-I.
5. Guard File.
6. P.A.

