



- आयुक्तालय (अपील-1) केंद्रीय उत्पादन शुल्क *
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटेकनिक के पास, आमबाबाडि,
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(30)/93/Ahd-I/2016-17 / 3031-36
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-016-2017-18
दिनांक 28.06.2017 जारी करने की तारीख Date of Issue 12/7/17

श्री उमा शंकर आयुक्त (अपील-1) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Asstt.Comm. Commissioner, Div-II केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
AC/10/Div-II/2016-17 दिनांक: 07/10/2016, से सृजित

Arising out of Order-in-Original No. AC/10/Div-II/2016-17 दिनांक: 07/10/2016 issued by
Asstt.Comm. Commissioner, Div-II Central Excise, Ahmedabad-I

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

Cadila Healthcare 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 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 :

(i) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतत 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 :

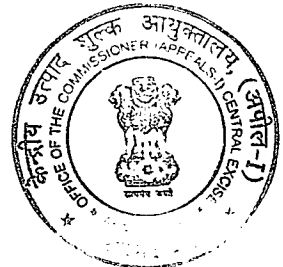
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के
दौरान हुई हो।

(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 हों।

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

Under Section 35B/ 35E of CEA, 1944 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 ओ-20, न्यू मैनटल हारस्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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.L.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.L.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।

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

This appeal has been filed by M/s Cadila Healthcare Ltd, Plot No.A1/3707 & 3708, GIDC Phase-IV, Vatva, Ahmedabad [hereinafter referred to the appellant] against Order-in-Original No.AC/10/Div-II/2016-17 dated 07.10.2016 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, Central Excise, Division-II, Ahmedabad-1[hereinafter referred to as "the adjudicating authority"].

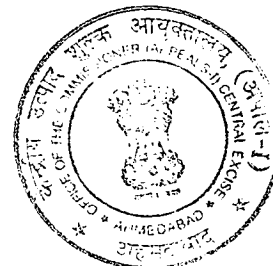
2. Briefly stated, the fact of the case is that the appellant is engaged in manufacture of medicaments under chapter 30 of Central Excise Tariff Act, 11985. On the basis of Audit report that they had availed Service tax credit on invoice issued by M/s Eagle Eye Security & Services on full rate amount, instead of 25% of amount for the period from April 2014 to November 2015, a show cause notice dated 22.03.2016 was issued to them for recovery of amount of Rs.27,018/- with interest and imposition of penalty. Vide the impugned order, the adjudicating authority has confirmed the recovery of the said amount with interest and imposed penalty under Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that under full or partial Reverse Charge Mechanism (RCM), if the service provider has paid the tax, no service tax can be again demanded from service recipient under notification 30/2012-ST and such demand would amount to double recovery; that in the instant case instead of 25% of service tax, 100% service tax was paid by the service provider and accordingly, the appellant is eligible to take full amount of credit. The appellant has cited various case laws in support of their above arguments.

4. A personal hearing in the matter was held on 17.05.2017. Shri Vaibhav Vahia, Manager of the appellant appeared for the same and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum. The issue to be decided in the instant case is relating to eligibility of Service Tax credit amounting to Rs.27,018/- on the basis of invoice issued by the service provider, who avails benefit under Notification No.30/2012-ST dated 20.06.2012 as amended.

6. At the outset, I observe that the appellant was availing service by way of supply of manpower for any purpose or security services from M/s Eagle Eye Security Service, a proprietary concern who avails the benefit of Notification No.30/2012-ST dated 20.06.2012 as amended by notification No.45/2012-ST dated 07.08.2012. The period involved is April 2014 to November 2015. As per the provisions of the said Notification, 25% of service tax was required to pay by the service provider and remaining 75% was required to pay by the service recipient i.e the appellant.

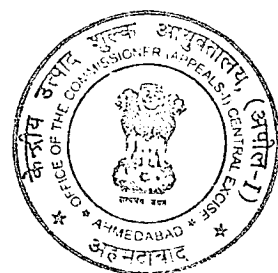


7. The appellant has contended that they had taken 100% credit of service tax as the service provider has paid the full amount of service tax and charged the said amount from them and recovery of such amount would amount to double taxation. The adjudicating authority has not accepted the said contention and stated that the instant case deals with recovery of service tax credit wrongly availed and not any recovery of service tax; that as per provisions of Rule 9 of Cenvat Credit Rules, 2004, credit shall be taken on the basis document evidencing payment of service tax and in the instant case. the appellant has taken without such documents and merely on the premise that the service provider has paid full amount of service tax under the said notification.

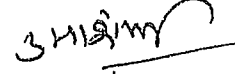
8. I observe that during the disputed period, the service provider has availed benefit of notification No.30/2012-St as amended and as per the provisions of the said notification, the liability of paying service tax @75% was on the appellant and on the basis such payment they can take credit of the said amount apart from the credit of payment of 25% made by the service provider. The said notification notifies taxable service and extent of Service Tax payable thereon by person liable to pay Service Tax. All it states is that taxable services provided or agreed to be provided by way of supply of manpower for any purpose or security service are liable to Service Tax and provider of such service has to bear 25% and recipient has to bear 75%. Hence, for the disputed period, the amount paid in excess if any by the service provider is not relevant for taking Cenvat credit and such amount goes to the credit of Government account. The adjudicating authority at para 14 of the impugned order categorically explained that in the relevant invoices, the service provider has specifically mentioned the abatement of 75% of service tax availed by the under notification No.30/2012-ST as amended and payment of service tax @25%. This fact was not challenged or disputed by the appellant either before adjudicating authority or before appellate authority. In the circumstances. as per documents evidencing payment of service tax paid by the service provider, the appellant is eligible to take only such paid amount. In view of above unambiguous situation. the argument of the appellant that the service provider has paid the tax at full rate and accordingly they had taken the credit at full does not have any merit. especially in a situation where they have failed to produce any documentary evidence that the service provider has discharged the tax liability at full rate.

9. The appellant has relied on various case laws stating that demand of service tax from them would amount to double taxation of service tax. Since the instant case is relating to recovery of wrongly availed service tax/excess credit availed. I do not find worth to discuss the said citations here.

10. In view of above discussion, I hold that the adjudication authority has rightly denied the credit of service tax amounting to Rs.27,018/-for the disputed period and restored the impugned order in original in all aspect.



11. The appeal stand disposed of accordingly.

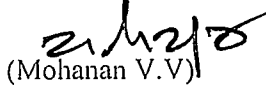


(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 28/06/2017

Attested


(Mohanan V.V)
Superintendent (Appeal-I)
Central Excise, Ahmedabad
BY R.P.A.D.

To,
M/s Cadila Healthcare Ltd,
Plot No.A1/3707 & 3708, GIDC Phase-IV,
Vatva, Ahmedabad

Copy to:

1. The Chief Commissioner of Central Excise Zone, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-I.
3. The Additional Commissioner(Systems) Central Excise, Ahmedabad - I
4. The Additional Commissioner, Central Excise, Ahmedabad-I
5. The AC/DC, Central Excise, Division-II Ahmedabad-I
6. Guard file
7. P. A.

