केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
7th Floor, GST Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015

सत्यमेव जयते
केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

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क फाइल संख्या : File No : V2(30)/204/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-448-2017-18**
दिनाँक Date : **26-03-2018** जारी करने की तारीख Date of Issue 17/4/2018

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

ग Arising out of Order-in-Original No. **MP/3960-3964/AC/2017-Reb** दिनाँक: **12/01/2018** issued by Assistant Commissioner, Central Tax, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Halewood Laboratories 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 a 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।

(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 मामलें 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 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।

(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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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 मैन्टल हास्पिटल 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. 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) यदिं इसं 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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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), के प्रति अपीलो 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."

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS), CENTRAL EXCISE AHMEDABAD अहमदाबाद

ORDER IN APPEAL

M/s Halewood Laboratories Pvt. Ltd., 319, Phase-II, GIDC, Estate, Vatva, Ahmedabad- 382 445 *(hereinafter referred to as 'appellants')* have filed the present appeals against the Order-in-Original No. MP/3960-3964/AC/2017-Reb -dated 12.01.2018 *(hereinafter referred to as 'impugned orders')* passed by the Asst. Commissioner, Central Tax, Div-III, GST Bhavan, Ahmedabad *(hereinafter referred to as 'adjudicating authority')*.

2. The facts of the case, in brief are that appellant has filed five rebate claims u/r 18 of CER, 2002 r/w Notification No. 21/2004- CE (NT) dated 06.09.2004 seeking rebate of duty paid on inputs used in manufacture of export goods namely Oral Rehydration Salts (S.H. 30049086) on which NIL C. Ex. duty is leviable.

Sr.	Name of Merchant Exporter	ARE-2 No./dt.	AMOUNT
1	Biomatrix Healthcare P. Ltd.	23/28.03.17	14189/-
2	Vaishali Pharma P. Ltd.	19/04.03.17	42910/-
3	Nest Life Science P. Ltd.	10/19.10.17	116775/-
4	Caplin Point Lab Ltd.	17/30.01.17	37340/-
5	Biomatrix Healthcare P. Ltd.	20/14.03.17	7693/-
		Total	218907

3. Whole claim was rejected by the adjudicating authority vide impugned OIO. Being aggrieved with the impugned order, the appellants preferred an appeal on 09.03.2018 before the Commissioner (Appeals), Central Tax, Ahmadabad.

4. Personal hearing in the case was granted on 12.03.2018. Shree R.R. Dave, Consultant appeared before me and reiterated the grounds of appeal.

DISUSSION AND FINDINGS

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants, evidences produced at the time of personal hearing.

6. I observe that five claims filed has been rejected by the adjudicating on following conclusion/observation-

a. It is declared in all ARE-2 at Sr. No. (d), that **they would not claim any drawback of export but they (merchant exporter) had claimed the same from Customs authority** as evident from corresponding Shipping Bill (SB). As per rule 18, CER, 2002 r/w Noti. No. 21/2002- CE(NT) r/w 19/2004- CE (NT) r/w para 1.5 of Part V of chapter 8 of CBEC`s Excise manual of supplementary instruction/w section 142 of CGST Act, 2017, r/w Notification No. 131/2016-Customs(NT) dated 31.10.2016 input stage rebate claim cannot be claimed where finished goods exported under Claim of duty Drawback.

b. In some Shipping Bill an attempt had been made to overwrite the details of drawback with black ball point pen or whitener to hide the details of drawback. Attempt has been made to conceal the writing in some ARE-1 by whitener or overwriting. There is tempering of documents.

c. Transporter copy of Invoice and Mate receipts, claimed to submitted has not been submitted.

d. Quantity of goods shown in ARE-2 are in Kgs where as it is shown as pcs (pieces) in corresponding SB. Hence quantity could not be tallied and verified.

e. Notification No. 44/2016- CE(NT) dated 16.09.2016 r/w circular No. 1047/35/2016-CX dated 16.09.2016 made certain changes in ARE-2 details requirement but appellant did not follow the said Notification and circular.

f. In ARE-2 No. 11/19.10.2016 there is no mention of SB 2704357 at back side of ARE-2 and attempts have been made to temper the SB to hide the details regarding availment of drawback from customs.

g. Appellant did not replied to query memo nor attended any PH granted

h. Following discrepancies found in documents-

ARE-2	Discrepancy found
23/28.03.17	Customs endorsing at the back of ARE-1 was not proper- name of officer and stamp missing. Quantity in ARE-2, SB and invoice not matching.
19/04.03.17	Excise invoice not submitted. Bill of lading does not mention about correspond SB. Quantity in BL and SB are not tallying.
10/19.10.16	Quantity in ARE-2 does not tally with invoice. Dates of shipped on board (29.10.16) and dates of

	sailing(29.10.16) of vessel precedes dates of sealing of container by customs (31.10.16)
17/31.01.17	Excise invoice not submitted. ARE-2 quantity not tallied with SB. BL quantity not tallied with SB quantity. BL does not mention about SB details.
20/14.03.17	Excise invoice not submitted. Quantity AND description not tallied with SB

7. First I shall take **ground "a" above** taken by adjudicating authority to reject the claim. Appellant is manufacturer of goods which are exported through merchant exporter, who claimed drawback in Customs Department, though it was specially declared in all ARE-2 at Sr. No. (d) of Notification 21/2004- CE(NT), that **"(d) We further declare that we shall not claim any Drawback on export of the consignment covered under this application".**

8. Appellant had contended that drawback should not have been given to Merchant Exporter by customs, when it was specifically declared in all ARE-2 at Sr. No. (d). This argument is no help to appellant as C. Ex. Authority sanctioning the rebate has to see to it that all conditions, including that mentioned at Sr. No. (d) of ARE-2, of Notification in respect of "goods" exported are fulfilled are not?. Whole Notification No. 21/2004-CE (NT) is with reference to "goods" only and ownership of goods or inputs, or who shall file claim- i.e. manufacturer or Merchant Exporter- or who shall claim drawback is not specified. That means that if drawback is availed on "goods" exported then input stage rebate on that "goods" shall not allowed. Double benefit to manufacturer on same "goods" by way of input stage rebate can not be granted on plea that Merchant exporter should not have claimed drawback claim at customs. Conditions of said notifications are therefore not complied, resultantly, rebate of duty paid on input goods can not be granted.

9. Further, regarding documents verification discripency as stated at above para 6(h), I see that appellant has not put forth any defense regarding Non submission of transporter copy, mis-match of ARE-2 quantity that with corresponding SB /BL, non endorsement by customs, shipping dates preceding the container sealing dates of customs overwriting/ canceling writing with whiner on ARE-2, tempering of SB to hide the details regarding availment of draw back from customs by merchant exporter etc.. Such tempering of documents is not expected from appellant.

10. In view of above, appeal filed by the appellants is rejected and impugned OIO is upheld.

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

11. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD

To,

M/s Halewood Laboratories Pvt. Ltd.,

319, Phase-II, GIDC, Estate,

Vatva, Ahmedabad- 382 445

Copy to:

1) The Chief Commissioner, Central Tax, Ahmedabad South .
2) The Commissioner Central Tax, CGST,Ahmedabad South.
3) The Asst. Commissioner, Central Tax, Div-III, Ahmedabad South
4) The Asst. Commissioner(System), Hq, Ahmedabad South.
5) Guard File.
6) P.A. File.

केन्द्रीय उत्पाद शुल्क आयुक्तालय, (अपील-I) CENTRAL EXCISE OFFICE OF THE COMMISSIONER (APPEALS-I) AHMEDABAD अहमदाबाद