

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर, शुल्क भवन, सातवी मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015 7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015	
 079-26305065	टेलिफैक्स : 079 - 26305136	

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(34)124,125,126,127&128/Ahd-I/2016-17 [१४२ को ११]
 Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-061 to 065 -2017-18
 दिनांक 18.08.2017 जारी करने की तारीख Date of Issue 25/9/17

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

ग Joint Commissioner केन्द्रीय कर, Ahmedabad-I द्वारा जारी मूल आदेश सं 01 & 02 /CX-I
 Ahmd/JC/MK/2017 दिनांक: 20/01/2017 से सृजित

Arising out of Order-in-Original No. 01 & 02 /CX-I Ahmd/JC/MK/2017 दिनांक: 20/01/2017 issued
 by Joint Commissioner, Ahmedabad-I

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

M/s. Sol Derma Pharmaceuticals Pvt. Ltd.
Shri Ronak Kumar P. Patel
Smt. Komalben Ronak kumar Patel
Shri Nisith Anilbhai Parikh
Shri Mehulbhai Hasubhai Gandhi
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 :

(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।



(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.

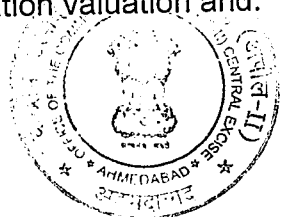
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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 अनुसूचि-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।

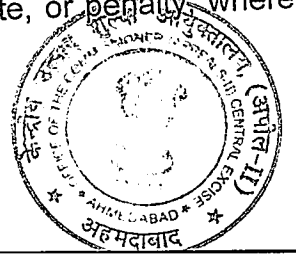
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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."

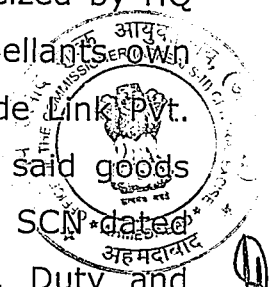


ORDER IN APPEAL

Following five appeals have been filed against the Order-in-Original number 01 and 02/CX-I Ahmd/JC/MK/2017 dated 20.01.2017 (Common OIO for two SCN dated 10.06.2015 and 29.01.2017) (hereinafter referred to as 'impugned orders') passed by the Joint Commissioner, C. Ex., HQ, Ahmedabad-I (hereinafter referred to as 'adjudicating authority').

Appeal No & dt. Of filing	Filed By	Duty confirmed	Penalty imposed	Remarks
124/16-17 Dt. 27.03.17	Sol Derma Pharma Pvt. Ltd., Narol, 105/NIDC Ahmedabad.	2,05,465/- & 77,030/- (Total- 2,82,495/-) u/s 11A(4)	2,82,495/- 11AC(1)(C) of CEA 1944 + 1,00,000/- Red. Fine u/r 25(1),(a),(b),(c)	Illicit removal penalty. case by Hq preventive
125/16-17 Dt. 27.03.17	Sh. Roanak Kumar P. Patel, MD	NIL	50,000/- PP u/r 26 of CER-2002	Managing Director of Sol Pharma
126/16-17 Dt. 27.03.17	Smt. Komalben Ronak kumar Patel	NIL	50,000/- PP u/r 26 of CER-2002	Director of Sol Pharma Pvt. Ltd
127/16-17 Dt. 27.03.17	Sh. Nishith Anilbhai Parikh, [C & F Agent]	NIL	50,000/- PP u/r 26 of CER-2002	Alpine Trade Link P.Ltd., Moraiya
128/16-17 Dt. 27.03.17	Sh. Mehulbhai H. Gandhi, [C & F Agent]	NIL	50,000/- PP u/r 26 of CER-2002	Alpine Trade Link P.Ltd., Moraiya

2. The facts of the case, in brief, are that, manufactured goods worth Rs. 6,23,220/- (4700 Nos of Dermal cream) and Rs. 16,62,334/- of appellant assessee (C.Ex. Regn. AAMC S3894B EM001) attracting C.Ex. duty of Rs. 77,030/- and Rs. 2,05,445/- respectively were seized by HQ preventive on 16.06.2014 & 17.06.2014 respectively from appellants own manufacturing premises and from premises of M/s Alpine Trade Link Pvt. Ltd, the C & F Agent of Appellant assessee respectively, as said goods were not accounted for in RG-1 and duty thereon was not paid. SCN dated 10.06.2015 was issued and adjudicated vide impugned OIO. Duty and penalty as shown above in table was imposed on Appellant assessee.



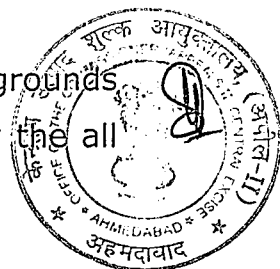
Moreover personal penalty u/r 26 of CER, 2000 on above persons as shown was also imposed. Appellant assessee and above four persons, being aggrieved of impugned OIO, have filed these present appeals [OIO portion in respect of SCN dated 10.06.2005]. Appellant had pleaded that they have paid the Central Excise duty before clearance vide Invoice No. 027 dated 06.06.2014 and it was reflected in ER-3, but the Adjudicating authority has not considered the invoice. Further pleaded that penalty on Sh. Komalben and Sh. Nishith Anilbhai Parikh has been imposed without recording statements.

3. On 16.06.2016 parallel search was made in office premises situated at Ganesh Meridian, Opp. Kargil Pump, SG Highway, Ahmadabad and documents were seized. Duty evasion of Rs. 17,76,046/- by resorting to undervaluation, wrong availment of excess abatement and clandestine clearance of finished goods through delivery challan without accompanying Central Excise invoice was noticed. SCN dated 29.01.2016 was issued for recovery Rs. 17,76,046/- but proceedings has been closed vide impugned OIO dated 20.01.2017 as per Section 11 AC(1)(d) as entire duty of Rs. 17,76,046/- along with interest of Rs. 4,87,159/- and Penalty of Rs. 2,66,047/- has been paid within 30 days of issue of SCN. [Present appeals filed has nothing to do with OIO portion in respect of SCN dated 29.01.2016 for Rs. 17,76,046/-]

4. Personal hearing in the all five appeals were granted on 17.08.2017. Shree N. R. Parmar, Consultant from G. B. Patel & Associates, appeared before me and reiterated the grounds of appeal of all five appeals. Shree N. R. Parmar, Consultant, further stated that all invoices were submitted to lower authority but they have not considered those (para 34 of OIO- page 88). Regarding Penalty on Shri Komalben Ronk Kumar Patel, Director of M/s Sol Derma Pharmaceuticals and Shri Nishith Parekh Direcor, M/s Alpine Pharma (C & F agent) is imposed even though their statements were not recorded.

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 submissions made by the all five appellants at the time of personal hearing.



6. Question to be decided is whether sized goods of Rs. 6,23,220/- from factory and of Rs. 16,62,334/- from C & F agent were duty paid (vide invoice submitted before adjudicating authority vide letter dt. 23.06.2014) at the time of seizure. Another question to be decided is whether penalty can be imposed on Director, Shri Komalben Ronk Kumar Patel, Director of M/s Sol Derma Pharmaceuticals and Shri Nishith Parekh if the statement u/s 14 of CEA 1944 is not recorded.

7. Regarding factory seized goods of Rs. 6,23,220/- it is stated that goods were initially cleared on payment of duty on 06.06.2014 vide Excise Invoice No. Ex. Sol. 027 dated 06.06.2014 but returned from transporter on direction of consignee. Appellant has not produced any evidence to substantiate like rejection memo of buyer, returned goods challan, dispatch challan, record of return goods etc, that goods seized were infected returned goods. Appellant could not give satisfactory reply as to why clearance shown in RG-1 register (prepared after seizure) is on 04.06.2016 whereas the actual clearance as per so called invoice is on 06.06.2016. It seems that appellant is taking shelter under return goods plea to counter the illicit removal.

8. I find that Shri Vipul Panchal, Production-in-charge of appellant under panchnama dated 16.06.2014 had stated that said unit did not maintain RG-1, RG-23A Part-I, RG-23A Part-II and there was no sale invoice book available in factory premises; that finished goods are cleared under delivery challan; and that goods (i.e seized one) were ready for dispatch but same were not entered in RG-1.

9. I find that Sh. Ronak kumar Patel Director has under his statement dated 19.06.2014 recorded u/s 14 of CEA has confessed that Panchnama dated 16.06.2014 drawn at factory premises, office premises and at C & F agent premises to be true and correct. Further Sh. Ronak kumar Patel has never retracted his statement. I find that Sh. Ronak kumar Patel has confirmed that goods (seized one) received by M/s Alpine Trade Link Pvt. Ltd from M/s Sol Derma Pharmaceuticals were unaccounted and removed without Central Excise Invoice.

10. Regarding sized goods of Rs. 16,62,334/- from C & F agent premises it is stated that at para 34 of OIO adjudicating authority has stated that goods



To,

1. M/s Sol Derma Pharmaceuticals Pvt. Ltd., Plot No. 105, First Floor and Second Floor, NIDC, Lambha Mandir Road, NH No.-8, Narol, Ahmedabad.
2. Shri Ronak kumar P. Patel, Managing Director of M/s Sol Derma Pharmaceuticals Pvt. Ltd, NIDC, Lambha Mandir Road, NH No.-8, Narol, Ahmedabad.
3. Smt. Komalben Ronak kumar Patel, Director of M/s Sol Derma Pharmaceuticals Pvt. Ltd. NIDC, Lambha Mandir Road, NH No.-8, Narol, Ahmedabad.
4. Shri. Mehulkumar Hasulbhai Gandhi, Director of M/s Alpine Trade Links Pvt. Ltd. 30,31,42, 43 and 44, Silicon Industrial Hub, Opp. HOF Bavla Highway, Moraiya (C & Agent of Derma Pharma), Ahmedabad.
5. Shri. Nishith Anilbhai Parikh, Director of M/s Alpine Trade Links Pvt. Ltd. 30,31,42, 43 and 44, Silicon Industrial Hub, Opp. HOF Bavla Highway, Moraiya (C & Agent of Derma Pharma), Ahmedabad.

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner Central Tax, GST ^{South} North, Ahmedabad-.
- 3) The Additional Commissioner, Central Tax , GST ^{South} North, Ahmedabad
- 4) The Asst. Commissioner, C.Ex. Div-I, Ahmedabad-I(old jurisdiction).
- 5) The Asst. Commissioner(System), GST ^{South} North, Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.



Received copy
31/1/18
[Signature]

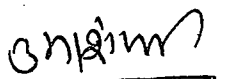
were duty paid. I have perused said para and find that it is mere contention of appellant and not the conclusion of adjudicating authority.

11. In view of above I fully agree with the findings of adjudicating authority at para 69 and 74 of OIO that goods were illicitly removed and hence liable recovery of duty with interest, penalty and redemption fine. I uphold the OIO in respect of appeal No. 124/2016-17 and reject the appeal. I find from statement recorded u/s 14 of CEA, 1944, that Shree Ronak Kumar Patel and Shri Mehulbhai Hasubhai Gandhi were involved in day to day work of their respective company. This illicit removal can not take place without their active involvement. I up hold the OIO imposing personal penalty u/r 26 of CER, 2002 on both of them. I reject the appeal No. 125/2016-17 and 128/2016-17.

12. I find that no oral evidence in the form of statement under Section 14 of CEA 1944 had been taken by investigating officers and there is nothing on record to substantiate that Sh. Komalben Ronak kumar Patel and Sh. Nishith Anilbhai Parikh were involved in day to day work of their respective company. Moreover there is nothing on record to link their involvement in said illicit clearance. In absence of positive concert evidence no personal penalty can be imposed. Therefore, I am inclined to set aside the penalty imposed u/r 26 of CER, 2002 on Sh. Komalben RonAk kumar Patel and Sh. Nishith Anilbhai Parikh. I allow the above appeals- No. 126/2016-17 and 127/2016-17


13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED


(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD

