

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

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)151/Ahd-II/2016-17 / 1130 b 1134  
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-072-2017-18  
दिनांक 31.08.2017 जारी करने की तारीख Date of Issue 28/9/17

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

ग Joint Commissioner, Service Tax, Ahmedabad द्वारा जारी मूल आदेश सं AHM-SVTAX-000-JC-010-16-17  
दिनांक: 28/07/2016 से सृजित

Arising out of Order-in-Original No. AHM-SVTAX-000-JC-010-16-17 दिनांक: 28/07/2016 issued by  
Joint Commissioner, Service Tax, Ahmedabad

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

**M/s. Espee Drugs & Finechem Co.  
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, 4<sup>th</sup> 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 :

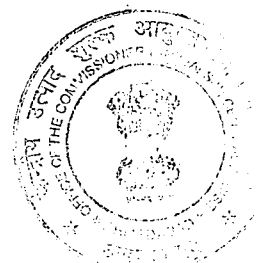
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(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।

... 2 ...



(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219K केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

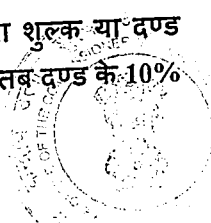
4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।



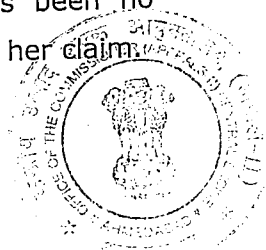
**:: ORDER-IN- APPEAL ::**

M/s. Espee Drugs & Finchem Co., 1007, Venus Atlantis, Anandnagar Road, Prahladnagar, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against Order-in-Original No. AHM-SVTAX-000-IC-010-16-17 dated 28.07.2016 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Service Tax, Hqrs., Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. Briefly stated the facts of the case are that an audit of the records of the appellants was conducted by the department's audit team, wherein it was noticed that the appellants were making the payment of Service Tax quarterly on receipt basis and showing the same in the ST-3 returns. During reconciliation of income figures recorded in their books of account it was noticed that the appellants had short paid Service Tax during the years from 2010-11 to 2013-14. It was accordingly concluded that the appellants had failed to pay the Service Tax of ₹17,33,188/-. Therefore, a show cause notice, 20.03.2015 was issued to the appellants which was adjudicated by the adjudicating authority. The adjudicating authority, vide the impugned order, confirmed an amount of ₹17,33,188/- under Section 73(1) of the Finance Act, 1994. He ordered the appellants to pay interest under Section 75 and imposed penalties under Sections 77(2) and 78 of the Finance Act, 1994.

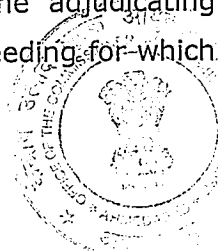
3. Being aggrieved with the impugned order the appellant has preferred the present appeal. They argued that they have already deposited the Service Tax on receipt basis. They further claimed that even if it was assumed that there was a difference between the challan value and amount of Service Tax claimed to have been paid under the challan in seventeen cases shown in paragraph 20 of the impugned order, the said 17 cha'lans involved Service Tax of only ₹3,37,208/- and hence only that amount could have been demanded instead of ₹17,33,188/-. However, the appellants claimed, there is no difference in the cases of most of the challans and the cases where there was difference, same was set off and made good by virtue of another challan.

4. Personal hearing in the case was granted on 19.06.2017 wherein Smt. Shilpa P. Dave, Advocate, on behalf of the said appellants, appeared before me and reiterated the grounds of appeal. She showed me paragraph 20 of the impugned order where only ₹3,37,208/- is shown as the disputed amount instead of ₹17,33,188/-. She submitted that the payment has been made (though delayed) along with interest but this fact has not been considered in the impugned order. She further argued that the benefit of the period 2010-11 has not been considered for interest and penalty as there has been no violation. She also made additional written submission in support of her claim.



5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and submissions made by the appellants at the time of personal hearing. I find that the show cause notice had proposed a demand of Service Tax amounting to ₹17,33,188/- along with interest and penalty. However, in paragraph 19 of the impugned order, the adjudicating authority states that the appellants had claimed before him that they had paid the tax liability and the amount billed in a particular year gets tallied with the actual receipts in different years and they had paid the entire tax liability, belatedly, along with interest. Further, in paragraph 20 of the impugned order, I find that, the adjudicating authority has reconciled the challans in terms of actual payments made by the appellants and found that there is a variation, in some cases, in the figures *vis a vis* challan value and the Service Tax paid by the appellants. In the same paragraph, the adjudicating authority has shown a table where 17 cases (out of all the challans) have been found with difference between the challan value and amount of Service Tax paid by the appellants. The appellants have claimed that these 17 challans involved Service Tax payment of only ₹3,37,208/- and therefore, only such amount could have been demanded. I accept the argument of the appellants that when the adjudicating authority have checked the actual payment with the challans and have found that only 17 challans are showing difference then how the department could demand the entire amount proposed in the show cause notice. I find that the adjudicating authority has failed to properly quantify the data shown in the table mentioned in paragraph 20 of the impugned order. He did not calculate the actual Service Tax liability from the difference between the challan value and Service Tax amount. I find the impugned order to be vague and non-speaking. The appellants also, in their part, did not submit any documentary evidence viz. challans etc. to enable me to come to the conclusion that they have actually paid the entire tax liability or otherwise. They have merely submitted a year wise worksheet showing date of receipt, tax paid and interest thereon. I do not have any source to verify the authenticity of the worksheet. I believe that the adjudicating authority is the best suited person to properly verify the challans i.r.t. the table shown in paragraph 20 of the impugned order and quantify the actual Service Tax liability, if any.

6. In light of the above discussion, I remand back the matter to the adjudicating authority to decide the case afresh. He should thoroughly verify all the challans with actual payments made by the appellants and issue a proper speaking order by recording and discussing all points pertaining to the tax liability of the appellants and actual tax paid by them. The appellants are also hereby directed to present all sort of assistance to the adjudicating authority by providing all required documents during the proceeding for which the case is remanded back.



7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
7. The appeals filed by the appellant stand disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

CENTRAL TAX (Appeals),  
AHMEDABAD.

ATTESTED

*28/11/17*  
(S. DUTTA)

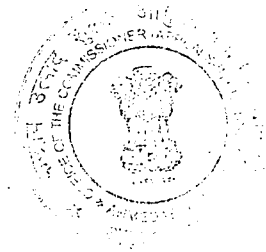
SUPERINTENDENT,  
CENTRAL TAX (APPEALS),  
AHMEDABAD.

**BY R.P.A.D.**

To,  
M/s. Espee Drugs & Finchem Co.,  
1007, Venus Atlantis,  
Anandnagar Road, Prahladnagar,  
Ahmedabad- 380 015.

**Copy To:-**

1. The Chief Commissioner, Central Tax, Ahmedabad Zone.
2. The Commissioner, Central Tax, Ahmedabad (South).
3. The Dy./Asst. Commissioner, Central Tax, Division-VII (Satellite), Ahmedabad (South).
4. The Asst. Commissioner (System), Central Tax Hq, Ahmedabad (South).
5. Guard File.
6. P. A. File.



10-10-10

