



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

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

7th Floor, GST Building,
Near Polytechnic,

Ambavadi, Ahmedabad-380015

☎ : 079-26305065

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(30)31to34/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-042to45-2018-19
दिनांक Date : 31-08-2018 जारी करने की तारीख Date of Issue

श्री. उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/4025-4028/AC/2017-reb दिनांक: 16.03.2018 issued by
Assistant Commissioner, Div-III, Central Tax, Ahmedabad-South

घ 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 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 परन्तु 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 :

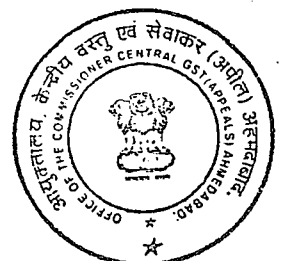
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(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।

... 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 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.

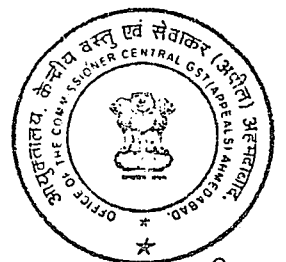
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैन्टल हास्पिटल कम्पाउण्ड, मेघानी 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.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।

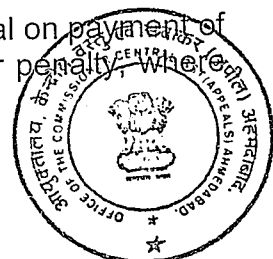
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क का 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 alone is in dispute."



ORDER IN APPEAL

The below mentioned four appeals have been filed by M/s. Halewood Laboratories Private Limited, 319, Phase-II, GIDC Vatwa, Ahmedabad 382 445 [for short – ‘appellant’] against OIO No. MP/4025-4028/AC/2017-Reb dated 16.3.2018 passed by the Assistant Commissioner, CGST, Division III, Ahmedabad South Commissionerate [for short – ‘adjudicating authority’].

Sr. No.	Appeal No.
1	V2(30)31 to 34/Ahd-South/2018-19
2	V2(30)31 to 34/Ahd-South/2018-19
3	V2(30)31 to 34/Ahd-South/2018-19
4	V2(30)31 to 34/Ahd-South/2018-19

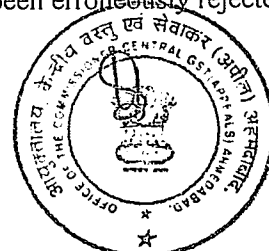
2. Briefly, the facts are that the appellant, filed four rebate claims on 18.12.2017 under Rule 18 of the Central Excise Rules, 2002 read with notification No. 21/2004-CE (NT) dated 6.9.2004, seeking rebate of duty paid on inputs used in the manufacture of export goods namely ORS [Oral Rehydration Salts]. After initial scrutiny of the rebate claim, a show cause notice dated 22.2.2018, was issued *inter alia* to the appellant proposing rejection of rebate on the grounds that

- [a] the details regarding value of goods and details of drawback were hidden/overwritten in the Shipping bills;
- [b] central excise invoices were not submitted; and
- [c] the appellant failed to follow the procedure prescribed in notification No. 44/2016-CE(NT) dated 16.9.2016 and circular No. 1047/35/2016-Cx dated 16.9.2016.

3. The adjudicating authority, rejected the rebate vide his impugned OIO dated 16.3.2018.

4. Feeling aggrieved, the appellant has filed this appeal raising the below mentioned grounds:

- that the impugned OIO suffers from legal infirmity, miscarriage of justice, and is illogical and bad in law;
- that the appellant has rightly filed the claims within the legal provisions of Central Excise Act;
- that they had exported the goods through merchant exporter vide ARE-2 after availing the benefit of notification No. 21/2004-CE(NT) dated 6.9.2004 & had thereafter filed the rebate claims;
- that the purpose for submitting the shipping bill is to ensure export of goods by merchant exporters; that it is a business practice that the merchant exporter will always try to ensure that the manufacturer does not know certain details to maintain business secrecy; that it was not done to conceal facts;
- that the adjudicating authority had already verified the facts from ICEGATE;
- that they had enclosed copy of central excise invoice with the appeal papers;
- that they had followed the conditions of notification No. 21/2004 & had submitted the copy of the ARE 2 to the jurisdictional AC and Superintendent within 24 hours of export; that no objection was raised at that time; that they are ready to give declarations as prescribed under the notification No. 44/2016-CE(NT);
- that the appellant has neither availed any CENVAT credit on inputs nor have they claimed any drawback; that the claim pertains to only the input credit suffered by the appellant in export of exempted goods and hence has been erroneously rejected.



5. Personal hearing in the matter was held on 24.8.2018 wherein Shri Anil Gidwani, Tax Consultant, appeared on behalf of the appellant and reiterated the grounds of appeal. He also stated that the rebate was rejected on procedural grounds.

6. I have gone through the grounds of appeal, the brief facts and the oral averments raised during the course of personal hearing. The only question to be decided is whether the appellant is eligible for rebate or otherwise. I find that the appeals have been filed beyond the prescribed time limit. The appellant has filed an application for condonation of delay of 24 days. The condonation is allowed, in terms of proviso to section 35(1) of the Central Excise Act, 1944.

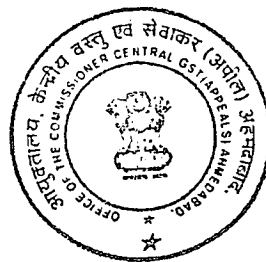
7. I have already mentioned the allegations made in the show cause notice, which proposed rejection of rebate and hence do not wish to repeat it. The adjudicating authority, rejected the rebate claims, holding as follows:

- that though it was declared in the ARE-2 that no drawback would be claimed, on going through the shipping bills it is evident that they had claimed drawback from Customs authorities;
- that the appellant has not given any explanation on the tampering in shipping bills;
- that they failed to submit the excise invoices, only handing the computer printouts;
- that the appellant failed to follow the conditions of notification No. 44/2016 dated 16.9.2016 and circular no. 1047/35/2016-Cx dated 16.9.2016.

8. The appellant in the appeal memorandum has not contested the findings of the adjudicating authority, that drawback was claimed. Now this is a serious allegation/finding, which should have been addressed by the appellant. Even more serious and grave is the finding of the adjudicating authority that details of the drawback, in the shipping bills were overwritten. The appellant's explanation to this is that value was hidden, owing to business practice, so as to not disclose it to the manufacturer. Now there is a difference between the terms 'hidden' and 'overwritten'. The appellant is again silent on the finding of the adjudicating authority that the details of the drawback, was overwritten. What I find even more surprising is that the appellant has not submitted the copy of the shipping bills, with the appeal papers. In-fact the notice as is evident was given after verifying the facts from ICEGATE. The appellant has in the grounds [para F iii] mentioned that Central Excise invoice is annexed with the appeal papers. However, on going through the appeal papers, I find that no such invoice is annexed with the papers. The appellant, I find has not approached the appellatte authority with clean hands. Therefore, I do not find any compelling reasons to interfere with the findings of the adjudicating authority and thus reject the appeals filed by the appellant. The impugned OIO is therefore, upheld.

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

Date: .08.2018

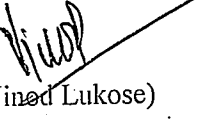


उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Attested



(Vinod Lukose)
Superintendent (Appeal)
Central Tax, Ahmedabad.

BY R.P.A.D

M/s. Halewood Laboratories Private Limited,
319, Phase-II,
GIDC Vatwa,
Ahmedabad 382 445.

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Addl./Joint Commissioner, (Systems), Central Tax, Ahmedabad South Commissionerate.
4. The Dy. / Asstt. Commissioner, Central Tax, Div III, Ahmedabad South Commissionerate.
5. Guard file.
6. P.A

